ETHICS MANUAL FOR MEMBERS, OFFICERS, AND EMPLOYEES OF THE U.S. HOUSE OF REPRESENTATIVES

PREPARED BY THE STAFF OF

THE COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

100th Congress, First Session

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1987

H742-4

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FOREWORD

The objective of this *Manual* is to provide Members, officers (Chaplain, Clerk of the House, Doorkeeper, Postmaster, and Sergeant at Arms), and employees of the House of Representatives with a single, comprehensive reference containing guidance about standards of conduct, rules, regulations, and statutes applicable to their activities. The *Manual* both highlights major ethical concepts and offers a more detailed discussion of selected issues. Where appropriate, the *Manual* also includes the text of, or cites to, relevant decisions and opinions in a subject area. Notwithstanding its apparent detail, this publication is intended *only* as an overview and a reference tool, and *not* an exhaustive compilation of all ethical matters and potential situations or a study of all points and authorities in the areas discussed.

As the Rules of the House pertaining to ethical conduct have evolved since April 1967 when the Committee on Standards of Official Conduct was first established, so have the entities responsible for recommending and interpreting the standards of official conduct varied. Consequently, this *Manual* refers to the interpretations and actions of three major organizations which have had responsibility in the area of ethics: the Commission on Administrative Review, also known as the "Obey Commission;" the Select Committee on Ethics; and the Committee on Standards of Official Conduct.

The "Obey Commission" was established in July 1976 to make recommendations to the House concerning ethical practices, financial accountability, and administrative operations of the House. The recommendations of the Commission were adopted by the House on March 2, 1977 (H. Res. 287) and resulted in changes in House rules in the areas of financial disclosure, outside earned income, acceptance of gifts, unofficial office accounts, franking privileges, and travel. The Commission also recommended the creation of a select committee with legislative jurisdiction relating to the Commission's recommendations.

Pursuant to the Commission's recommendation, a Select Committee on Ethics was established in March 1977 to provide guidelines and interpretations concerning House Rules XLIII, XLIV, XLV, XLVI, and XLVII and to report legislation. During the 2 years the Select Committee was in existence, it issued 13 formal Advisory Opinions interpreting the new House rules and recommended that House Rules XLIV (financial disclosure) and XLVI (franking) be enacted into law, which did, in fact, occur. When the Select Committee completed its task, its records and materials were transferred to the Committee on Standards of Official Conduct to assist the latter in its rendering advisory opinions and interpreting House rules relating to financial ethics and standards of conduct.

As appropriate, the *Manual* reflects and refers to the work of each of these three entities, which, in sum, constitutes the body of law and precedents implementing ethical standards in the House of Representatives. Where appropriate, the *Manual* also references matters under the jurisdiction of other entities that have a bearing on official conduct.

The Committee hopes that the guidance and discussion contained in the *Manual* will not only answer the most frequently asked questions but, more importantly, result in an environment in which Members, officers, and employees are able to identify and avoid any situation in which the propriety of conduct may be at issue. Individuals are encouraged to call the Committee or other appropriate office for further guidance whenever it may be helpful. A list of phone numbers follows.

USEFUL TELEPHONE NUMBERS

House Committee on Standards of Official Conduct ("House Ethics Committee")	225-7103
Committee on House Administration	225-2061
Commission on Congressional Mailing Standards (Franking Commission)	225-0436
Office of Records and Registration, Clerk of the House	225-1300
Federal Election Commission:	
Congressional Relations	376-5136
Information Services	376-3120
Toll Free (all offices)	800-424-9530
Department of Justice, Office of Legislative Affairs	633-2141
Office of Government Ethics (Executive Branch)	632-0569
Senate Select Committee on Ethics	224-2981

CONTENTS

Chapter 1. GENERAL ETHICAL STANDARDS:

Page
- Highlights ... 1
- Violations of Ethical Standards ... 3
- Conduct Reflecting Creditably on the House ... 3
- Historical Applications of Rule XLIII, Clause 1 ... 4
- Historical Applications of Rule XLIII, Clause 2 ... 7
- Refraining From Legislative Activity After Conviction ... 8
- Code of Ethics for Government Service ... 9
- Rules of Supervisors, Committees, Members, and Officers ... 10
- Advisory Opinions ... 10

Chapter 2. GIFTS, TRAVEL, ENTERTAINMENT, AND FAVORS:

- Highlights ... 11
- Gifts From Lobbyists, Persons With a Direct Interest in Legislation, and Foreign Nationals ... 15
- What Does and Does Not Constitute a Gift ... 15
  - Exemptions stated in the rule ... 15
  - Items not intended to be covered ... 16
  - Substantial participation ... 17
  - Fact finding ... 17
- Who Has a Direct Interest in Legislation ... 19
- Gifts to a Spouse or Dependents ... 19
- Valuation of Certain Gifts ... 20
- Gifts From Foreign Governments ... 20
- Fund Raisers and Testimonials ... 21
- Appearances of Influence ... 23
- Bribery ... 23
- Financial disclosure ... 24
- Appendices to Chapter 2—Advisory Opinions of the Select Committee on Ethics, 95th Congress:
  - No. 7. Definition of a Gift ... 27
  - No. 10. Who Has a Direct Interest in Legislation ... 30
  - No. 2. Expenses for Substantial Participation ... 33
  - No. 8. Fact-finding Related to Official Duties ... 34
  - No. 9. Definition of an Indirect Gift ... 37
  - No. 3. Free Transportation on Inaugural Flights ... 38
- Valuation of Gifts of Transportation on Private Aircraft, letter of June 11, 1987 ... 39

Chapter 3. OUTSIDE EMPLOYMENT AND INCOME OF MEMBERS, EMPLOYEES, AND SPOUSES:

- Highlights ... 43
- Outside Employment and Official Activities ... 45
- Members' Outside Earned Income Limitation ... 47
  - Personal service businesses ... 48
  - Business corporations ... 49
  - Close corporations, partnerships, and unincorporated businesses ... 49
- Honorarium Restrictions ... 50
- Service for Others Before Federal Agencies ... 52
- Contracting With the Federal Government ... 54
- Dual Government Employment ... 56
- Professional Staff of Committees ... 57
- Foreign Governments ... 58
- Private Foundations ... 59
- Financial Disclosure Reports ... 59
- Practice of Law ... 60
  - Statutory restrictions on law practice by Members ... 61
  - Affiliation with a firm ... 61

Page
    Federal practice by partners ... 63
    Other general rules ... 65
  Employment Considerations for Spouses of Members ... 66
  Appendix to Chapter 3—Advisory Opinion No. 13 of the Select Committee on Ethics, 95th Congress:
    Interpretation of the Limitations on Members' Outside Earned Income ... 69
Chapter 4. STAFF COMPENSATION AND DUTIES:
  Highlights ... 77
  General Employment and Compensation Provisions ... 79
  Nepotism ... 80
  Discrimination ... 81
  Bribes, Political Activities, or Contributions for Jobs ... 81
  Salary Kickbacks ... 82
  Performance of Official Duties ... 83
  Political and Campaign Activity by House Employees ... 86
  House Staff Outside Employment Considerations ... 88
  Appendix to Chapter 4—Advisory Opinion No. 2 of the Committee on Standards of Official Conduct:
    On a Member's Clerk Hire ... 89
Chapter 5. OFFICIAL ALLOWANCES AND LIMITATIONS:
  Highlights ... 91
  General Allowance for Official Expenses ... 93
  False Claims, Fraud ... 94
  Unofficial Office Accounts ... 97
  Appendix to Chapter 5—Advisory Opinion No. 6 of the Select Committee on Ethics, 95th Congress:
    Acceptance of In-Kind Services for Official Purposes ... 101
Chapter 6. THE FRANKING PRIVILEGE:
  Highlights ... 105
  Commission on Congressional Mailing Standards ... 107
  Authorization To Use the Frank ... 108
  General Standards of Frankability ... 109
    Frankable mail matter ... 109
    Nonfrankable mail matter ... 110
  Mass Mailings ... 110
  Postal Patron Mail ... 111
Chapter 7. FINANCIAL INTERESTS AND DISCLOSURE:
  Highlights ... 113
  Use of Office for Personal Gain ... 116
  Public Disclosure ... 117
  Financial Disclosure Requirements ... 119
    Spouse and dependent information ... 119
    Income—earned and unearned ... 120
    Holdings ... 120
    Transactions ... 121
    Liabilities ... 121
    Gifts ... 122
    Reimbursements ... 122
    Positions ... 123
    Agreements ... 123
  Blind Trusts ... 123
    Summary of requirements of blind trusts ... 124
  Amendments to Financial Disclosure Statements ... 126
  Voting on Matters of Personal Interest ... 127
  Appendices to Chapter 7:
    Interpretative Ruling No. 1, Committee on Standards of Official Conduct: Members' Principal Assistants ... 131
    Policy Regarding Amendments to Financial Disclosure Statements, Letter of April 23, 1986 ... 134
Chapter 8. CAMPAIGN FUNDS AND PRACTICES:
  Highlights ... 137
  General Campaign Finance Requirements ... 139
  Restrictions on Receipt of Contributions ... 140
  Political Contributions From Government Employees ... 141
  Political Contributions by House Employees ... 142
  Use of Campaign Funds ... 144

Page

- *Bona fide* campaign purpose 144
- No official use 146
- Franking 147
- Testimonials and fund raisers 148
- Legal defense funds 148

- Excess Campaign Funds 148
- Political Use of Congressional Resources 150
- Campaign Activity in a Federal Building 151
- List of Prohibited Campaign Activities 151
- Appendices to Chapter 8:
  - Advisory Opinion No. 6 of the Committee on Standards of Official Conduct: Funds for a Town Meeting 155
  - Advisory Opinions of the Select Committee on Ethics:
    - No. 4. Direct Mail Solicitations by a Member 157
    - No. 11. Third Party Fund Raising for a Member 159
  - Guidance Concerning Political Activities of Members, Officers and Employees of the House, Committee Letter of November 21, 1985 160

Chapter 9. COMMUNICATIONS WITH ADMINISTRATIVE AGENCIES:

- Highlights 165
- *Ex Parte* Communications 167
- Undue Influence 168
- Congressional Standards 169
  - Representations 169
  - Principles to be observed 170
- Compensation for Government Services 170
- Unofficial Representational Activities 171
- Recommendations for Employment in the Competitive Service 171
- Recommendations for Employment in the Postal Service 173
- General Statutory Prohibitions 173
- Appendix to Chapter 9—Advisory Opinion No. 1 of the Committee on Standards of Official Conduct: Federal Agency Communications 175

Chapter 10. SUPPORT ORGANIZATIONS AND UNOFFICIAL ENTITIES:

- Highlights 179
- Legislative Service Organizations 181
- Informal Member and Staff Organizations 182
- Expressions or Symbols of Official Sponsorship 183
- Involvement With Outside Activities and Entities 185
- Government Agency Conferences 186
- Support for Commercial Enterprises 187
- Mailing Lists 188
- Appendix to Chapter 10—Advisory Opinion No. 5 of the Committee on Standards of Official Conduct: Appeals on Behalf of Private Organizations 189

APPENDICES

Texts of Selected Rules, Regulations, and Statutes Relating to Standards of Conduct 193

1. House Rule XLIII—Code of Official Conduct 193
2. Code of Ethics for Government Service 195
3. House Rule XLV—Unofficial Office Accounts 196
4. House Rule XLVI—Use of the Frank 197
5. House Rule XLVII—Outside Earned Income 198
6. House Rule VIII—Duties of Members 200
7. Other Pertinent House Rule Provisions 200
   - Rule X, Clauses 1(t)(1), 4(e), and 6(a)(2)—Jurisdiction and Membership of the House Committee on Standards of Official Conduct 200
   - Rule XI, Clause 2, paragraphs (e)(2), (g)(1), (g)(2) and (i)—Committee records and meetings 202
   - Rule XI, Clause 4(a)—Privileged Reports 204
8. Foreign Gifts and Decorations Act Regulations 204
9. Title I, Ethics in Government Act (Legislative Branch Financial Disclosure; 2 U.S.C. § 701, *et seq.*) 208
   - House Rule XLIV—Financial Disclosure 223
10. Title 2, U.S. Code, Other Provisions 223
    - 2 U.S.C. § 31-1 (maximum acceptable honoraria) 223

Page

  2 U.S.C. § 86 (division of House salaries) 224
  2 U.S.C. § 87 (subletting of duties) 224
  2 U.S.C. § 101 (subletting of duties) 224
  2 U.S.C. § 439a (excess campaign funds) 225
  2 U.S.C. § 441i (honoraria practices) 225
11. Title 5, U.S. Code, Provisions 225
  5 U.S.C. § 557(d) (ex parte communications) 225
  5 U.S.C. § 3110 (nepotism) 226
  5 U.S.C. § 3303 (recommendations for employment) 227
  5 U.S.C. § 5533 (dual Government pay and employment) 228
  5 U.S.C. § 7342 (foreign gifts and decorations) 229
12. Title 18, U.S. Code, Provisions 233
  18 U.S.C. § 201 (bribery, illegal gratuities) 233
  18 U.S.C. § 203 (compensation in matters affecting the Government) 236
  18 U.S.C. § 204 (limits on Members' court practice) 236
  18 U.S.C. § 205 (representation in matters affecting the Government) 237
  18 U.S.C. § 211 (payments to obtain public office) 238
  18 U.S.C. § 286 (conspiracy to defraud the U.S.) 238
  18 U.S.C. § 287 (false claims) 238
  18 U.S.C. §§ 431–433 (contracts by Members of Congress with the Government) 239
  18 U.S.C. § 597 (expenditures to influence voting) 240
  18 U.S.C. § 598 (vote coercion using appropriations) 240
  18 U.S.C. § 599 (promise of employment by candidate) 240
  18 U.S.C. § 600 (promise of employment or benefit for political activity) 240
  18 U.S.C. § 601 (deprivation of employment or benefit for political activity 241
  18 U.S.C. § 602 (soliciting political contributions from Federal employees) 241
  18 U.S.C. § 603 (making contributions to employer) 242
  18 U.S.C. § 604 (solicitation from persons on relief) 242
  18 U.S.C. § 605 (disclosure of names of persons on relief) 242
  18 U.S.C. § 606 (intimidation to secure political contributions) 243
  18 U.S.C. § 607 (solicitation in Federal facilities) 243
  18 U.S.C. § 641 (embezzling, stealing public money) 243
  18 U.S.C. § 713 (misuse of the great seal) 244
  18 U.S.C. § 1001 (false statements to the Government) 244
  18 U.S.C. § 1719 (misuse of the franking privilege) 245
13. Title 22, U.S. Code, Provision 245
  22 U.S.C. § 2458a, the Mutual Educational and Cultural Exchange Act 245
14. Title 26, U.S. Code, Provisions 246
  26 U.S.C. §§ 4491 and 4946 (taxes on self-dealings with foundations) 246
15. Title 31, U.S. Code, Provisions 251
  31 U.S.C. § 1301(a) (use of appropriated funds) 251
  31 U.S.C. § 3729 (civil penalty for false claims) 251
  31 U.S.C. § 3730 (actions for recovery of funds) 253
16. Title 39, U.S. Code, Provisions 257
  39 U.S.C. § 1002 (political recommendations for the Postal Service) 257
  39 U.S.C. § 3210 (franking privilege) 258
17. Title 45, U.S. Code, Provision 263
  45 U.S.C. § 22 (standard restriction against Members of Congress benefiting from Government contracts) 263
Index 265

Chapter 1. GENERAL ETHICAL STANDARDS

Highlights

Members, officers, and employees of the House should

—conduct themselves at all times in a manner that reflects creditably on the House;

—abide by the spirit as well as the letter of House rules;

—not attempt to do something indirectly that may not be done directly; and

—abide by the broad ethical standards expressed in the "Code of Ethics for Government Service."

Members of the House are requested by House rules to refrain from certain legislative activity after conviction of some crimes until the Member's presumption of innocence is reinstated or until the Member is reelected to the House after conviction.

In addition to the general ethical standards noted and the specific standards discussed later in this manual, employees of the House should be aware of additional rules, regulations, standards, or practices that may apply to the specific office for which the employee works.

Members, officers, and employees of the House are *urged* to contact the Committee on Standards of Official Conduct with any questions regarding the propriety of any current or proposed conduct. The Committee will provide confidential, formal written advice to such requestors addressing any question within its jurisdiction.

Chapter 1. GENERAL ETHICAL STANDARDS

Violations of Ethical Standards. Various penalties or consequences may arise for a violation of an ethical standard. Each House of Congress is authorized under the U.S. Constitution to punish its Members for disorderly behavior and, with the concurrence of two thirds, expel a Member.[1] Precedents also show that the House may punish a Member by censure, reprimand, fine, condemnation, suspension, or demanding an apology on account of misconduct.[2]

The House Committee on Standards of Official Conduct is specifically authorized by the House rules to recommend to the House such "administrative actions" deemed appropriate to enforce standards of conduct for Members, officers, and employees; to investigate alleged violations of any law, rule, or regulation pertaining to official conduct; and to recommend to the House such action as the Committee deems appropriate in the circumstances. With the approval of the House, the Committee also may report substantial evidence of violations of law by a Member, officer, or employee to the appropriate law enforcement authorities.[3]

Violations of standards expressed in a criminal statute may result in a specific fine or imprisonment, or both. Such penalty is generally provided within the statutory language or, as in the case of campaign law violations, in a penalties section applicable to multiple provisions in a chapter of the code. In some instances, such as conversion of Government funds or property to one's own use or other false claims concerning expenses or allowances, the Department of Justice might institute an action against a violator for recovery of the misappropriated funds.

Even where no specific penalties are provided, employees of the House may be removed from their positions for misconduct at the discretion of the employing Member[4] or committee[5] or by a supervising officer.[6]

Conduct Reflecting Creditably on the House.—Members, officers, and employees of the House are subject to broad ethical standards included in the Code of Official Conduct (Rule XLIII) of the Rules of the House of Representatives. Clause 1 of the Code states that "a Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives."

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[1] United States Constitution, Art. I, Sec. 5, cl. 2.

[2] "House of Representatives Exclusion, Censure, and Expulsion Cases from 1789 to 1973," Committee Print, Joint Committee on Congressional Operations, 93rd Cong., 1st Sess.; see, House Report No. 94-1364, Committee on Standards of Official Conduct, 94th Cong. 2d Sess.

[3] See, House Rule X, cl. 4(e)(1).

[4] 2 U.S.C. § 92.

[5] See, House Rule XI, cl. 6(a)(4) and 6(b)(3).

[6] 2 U.S.C. § 60-1; see also, 2 U.S.C. § 90.

In interpreting Clause 1 of the Code when first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that this standard was included within the Code to deal with "flagrant" violations of the law that reflect on "Congress as a whole," and that might otherwise go unpunished:

> Since the Constitution quite clearly makes the House the judge of its own membership, it seems appropriate to summarize in a single standard a tentative description of conduct, by which the House through referral from this committee can treat promptly with a given act or an accumulation of acts of a Member which it determines to have reflected discredit on the Congress.[7]

During floor debate preceding the adoption of the Code of Official Conduct, Representative Price of Illinois, Chairman of the Select Committee on Standards of Official Conduct, reiterated that, under Clause 1 of the Code, the Committee could deal with "any given act or accumulation of acts."[8] The Chairman qualified his explanation, however, by rejecting the notion that violations of law are simultaneous violations of the Code:

> The committee endeavored to draft a code that would have a deterrent effect against improper conduct and at the same time be capable of enforcement if violated. Initially the committee considered making violations of law simultaneous violations of the code, but such a direct tie-in was eventually ruled out for the reason that it might open the door to stampedes for investigation of every minor complaint or purely personal accusation made against a Member. At the same time there was a need for retaining the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress. Stated purposefully in subjective language, this standard [paragraph 1] provides both assurances.[9]

Later in the floor discussion, a member of the Select Committee, Mr. Arends of Illinois, noted that the committee did try to keep the focus of the proposed rules on official, rather than personal, conduct:

> The second fundamental to be recognized is that the Congress has the constitutional right to determine its own rules. And this right, too, has its limitations. The rules are applicable only in connection with the operation of the Congress itself. Somehow a line must be drawn as between what is personal conduct and what is official conduct.[10]

Historical Applications of Rule XLIII, Clause 1. As to the practical operation of the Code of Official Conduct, this Committee in the 95th Congress recommended disciplinary measures to the full House concerning the conduct of three Members of Congress. The

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[7] House Report No. 1176, 90th Cong., 2d Sess., Mar. 14, 1968, p. 17.
[8] 114 *Congressional Record* 8778, Apr. 3, 1968.
[9] *Id.*
[10] 114 *Congressional Record* 8785, Apr. 3, 1968.

Committee found that certain alleged conduct had violated Clause 1 of the Code as not reflecting creditably on the House as a whole. The conduct cited in the reports by the Committee as sustaining the charges dealt generally with the Korean Influence Investigation and specifically referred to alleged statutory violations in some instances. Included among the violations were failure to report campaign contributions [11] and perjury.[12]

The Committee also initially charged a Member with making false writings to the Committee where no criminal violation had been cited.[13] In an earlier Statement of Alleged Violations, the Committee had cited the receipt of favors or benefits "under circumstances which may be construed by reasonable persons as influencing the performance of Governmental duties" in violation of Rule 5 of the Code of Ethics for Government Service,[14] as violating Clause 1 of the Code of Official Conduct.[15] However, the Committee found that this latter charge was not sustained by clear and convincing evidence in the case presented. The three Members of the House who were the subjects of the Committee's recommendations for disciplinary action were officially reprimanded by the House of Representatives on October 13, 1978.[16] Notably, none of the three Members disciplined were, at the time of Committee and House action, under indictment for the specific conduct alleged.

In the 96th Congress, the general standard of Clause 1 of XLIII was again used as a basis for several disciplinary proceedings against Members of the House. In the most severe action, a Member was expelled by the full House for his conviction on bribery charges.[17] In recommending expulsion, this Committee stated that the action was based on its finding "that he took money in return for promising to use that influence on their behalf and that he thereby acted corruptly, in violation of law, and in total disregard of his duties and obligations as spelled out in Clauses 1 through 3 of House Rule XLIII." [18] Another Member, who was criminally prosecuted and found guilty for "accepting a bribe in exchange for promises to perform legislative acts," was found to be in violation of Clause 1 of Rule XLIII, among other House rules and ethical standards.[19] The Member resigned from the 96th Congress before the Committee recommended sanctions.

The House in the 96th Congress censured a Member and required him to make restitution of all moneys that he had personally benefited from in his admitted misuse of the congressional clerk-hire allowance.[20] This Committee, in recommending the action, noted that the Member had acknowledged misusing the allowance to his own unjust enrichment in violation of a specific House rule and that such conduct reflected discredit on the House.[21] The Member had previously been convicted on federal mail fraud and false statement charges stemming from these activities.[22]

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[11] House Report No. 95-1742, 95th Cong., 2d Sess., to accompany H. Res. 1415, 95th Cong., pp. 2-3 (see count 1), referring to P.L. 92-225, § 304(b)(2); House Report No 95-1743, 95th Cong., 2nd Sess., to accompany H. Res. 1416, 95th Cong., pp. 2-3 (count 1), referring to P.L. 92-225, §§ 302(b) and 304.

[12] House Report No. 95-1743, *supra*, at pp. 3-4 (count 3; see also count 4 not sustained by the committee), referring to 18 U.S.C. § 1621.

[13] House Report No. 95-1741, 95th Cong., 2d Sess., to accompany H. Res. 1414, 95th Cong., pp. 4-5.

[14] 72 Stat., Part II, B 12 (1958).

[15] House Report No. 95-1742, *supra*, at pp. 3-4.

[16] See, 124 *Congressional Record* 36976-36984; 37005-37009; 37009-37017, Oct. 13, 1978.

[17] See, 126 *Congressional Record* 28953-28978, Oct. 2, 1980.

[18] House Report No. 96-1387, 96th Cong., 2d Sess., *In the Matter of Representative Michael J. Myers*, p. 5.

[19] House Report No. 96-1537, 96th Cong., 2d Sess., *In the Matter of Representative John W. Jenrette, Jr.*, p. 5.

[20] See, 125 *Congressional Record* 21584-21592, July 31, 1979.

Clause 1 of Rule XLIII was again cited in a later censure of a Member in the 96th Congress.[23] In that case, this Committee found that accepting gifts from persons with interest in legislation before Congress was in violation of House Rule XLIII(4) and conduct that reflected discredit upon the House in violation of Clause 1 of Rule XLIII.[24]

In another instance, this Committee issued a Statement of Alleged Violations against a Member for 24 counts of having "demanded or received money or other valuable consideration to influence officials of the United States Government on behalf of various private interests" and 1 count of perjury.[25] The Committee took no further action after resignation of the Member. Prior to the issuance of the Statement of Alleged Violations, the Member had been tried for various counts of bribery, conspiracy, and false declaration. That trial ended in a mistrial, and a new trial was ordered and was pending at the time of the Member's resignation.[26]

In the 97th Congress, Clause 1 of House Rule XLIII was cited as a basis for a recommendation that a Member be expelled.[27] The Member had been convicted of criminal offenses, including bribery, conspiracy, and accepting an illegal gratuity, which the Committee determined were acts that "constitute[d] extremely grave violations of House Rules."[28] The Member submitted his resignation after the Committee recommended his expulsion, and thus the House took no further action.[29]

Clause 1 also provided the basis for the recommendation of the Committee on Standards of Official Conduct in the 98th Congress that two Members be reprimanded.[30] Both Members were found to have engaged in sexual relationships with pages employed by the House.[31] Because of the special responsibility the House has in relation to its pages, similar to that of *in loco parentis,* it was determined that "a sexual relationship between a Member of the House and a teenage House page, even if consensual, constitutes a breach of the official obligations of a Member of the House," and a violation of Clause 1 of Rule XLIII.[32] The House voted the more severe sanction of censure for both Members.[33]

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[21] House Report No. 96-351, 96th Cong., 1st Sess., *In the Matter of Representative Charles C. Diggs, Jr.*

[22] See, report in *Washington Post,* Oct. 8, 1978, p. A1, *United States* v. *Diggs,* Crim. No. 78-142 (D.D.C.).

[23] See, 126 *Congressional Record* 13801-13820, June 10, 1980.

[24] House Report No. 96-930, 96th Cong., 2d Sess., *in the Matter of Representative Charles H. Wilson,* p. 5.

[25] House Report No. 96-856, 96th Cong., 2d Sess., *in the Matter of Representative Daniel J. Flood,* pp. 4-16, 125-126.

[26] The former Member eventually pleaded guilty to lesser charges of conspiracy to solicit illegal campaign contributions in exchange for dismissal of the felony counts; see, report in *Washington Post,* Feb. 27, 1980, p. A8.

[27] House Report No. 97-110, 97th Cong., 1st Sess., *In the Matter of Representative Raymond F. Lederer,* p. 16.

[28] *Id.,* at 5, 16.

[29] *Id.,* at 17.

[30] House Report No. 98-295, 98th Cong., 1st Sess., *In the Matter of Representative Gerry E. Studds;* House Report No. 98-296, 98th Cong., 1st Sess., *In the Matter of Representative Daniel B. Crane.*

[31] House Report No. 98-295, *supra;* House Report No. 98-296, *supra.*

Historical Applications of Rule XLIII, Clause 2. Clause 2 of House Rule XLIII, the Code of Official Conduct, provides that "a Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof." The original purpose of this provision, as noted in the report of the Select Committee on Standards of Official Conduct of the 90th Congress in recommending its adoption, was to deal with questions of decorum and legislative practices:

> Its purpose in the code is to restate and reemphasize the importance of the precedents of decorum and consideration that have evolved in the House over the years. These precedents are more than mere politeness; they are the essence of the order of the House.[34]

In the debate preceding the adoption of this provision, however, it was contemplated that the rule might provide an actionable standard for congressional discipline. As summarized by Chairman Price:

> This standard was drafted also in general terms rather than attempting to deal more specifically with such things as unfair and dilatory legislative tactics. It did not appear practicable to the committee to attempt to regulate these areas more closely. This standard should provide the House the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.[35]

The practical effect of Clause 2 of the Code has been to provide a device for interpretation and construction of other provisions of the Code and House rules. It has been interpreted to mean that a Member, officer, or employee may not do indirectly what the Member, officer, or employee would be barred from doing directly. This provision thus means that the House rule should be construed and applied broadly. The Select Committee on Ethics of the 95th Congress cited this provision to show that a narrow technical reading of a House rule should not overcome its "spirit" and the intent of the House in adopting the particular rule.[36] The Select Committee thus looked into the legislative history of a rule to find its purpose and intent.[37]

In addition to the use of Clause 2 as an aid to interpreting other House rules, this Committee cited a violation of the clause as one violation for which a Member was expelled in the 96th Congress.[38]

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[32] House Report No. 98-297, 98th Cong., 1st Sess., *Report of the Committee on Standards of Official Conduct on the Inquiry Under House Resolution 12, 98th Congress.*

[33] *Congressional Record*, July 20, 1983, H5280-H5295, (daily ed.).

[34] House Report No. 1176, 90th Cong., 2d Sess., Mar. 14, 1968, p. 17.

[35] 114 *Congressional Record* 8778, Apr. 3, 1968; see also, comments by Mr. Teague of Texas, member of the Standards of Official Conduct Committee of the 90th Congress, 114 *Congressional Record* 8799.

[36] See, Advisory Opinion No. 4, Apr. 6, 1977, of the Select Committee on Ethics, U.S. House of Representatives, 95th Cong.

[37] See, Advisory Opinion No. 6, May 9, 1977, of the Select Committee on Ethics, 95th Cong., p. 3.

[38] House Report No. 96-1387, *supra*, p. 5.

The clause was again cited by the Committee in the 97th Congress in recommending a Member's expulsion.[39]

Refraining From Legislative Activity After Conviction. On April 16, 1975, the House adopted an amendment to the Code of Official Conduct pertaining to a Member of Congress convicted of a crime. That provision, now Clause 10 of Rule XLIII, provides that a Member of the House who pleads guilty to, or is convicted of, a crime for which the sentence could be two or more years imprisonment should refrain from voting in the House until judicial or executive proceedings reinstate the Member's presumption of innocence or until he is reelected to the House after his conviction.

This Committee's report on the measure noted that the Committee will not, as a rule, take action on a complaint of a statutory violation by a Member where such conduct is known to, and is being acted upon by, the appropriate authorities. However, in the case of allegations of abuses of official authority or position to which no statute specifically applies, or in the case of alleged statutory violations where no "expeditious" action from law enforcement authorities is apparent, the Committee will not necessarily defer action on the matter:

> Where an allegation is that one has abused his direct representational or legislative position—or his "official conduct" has been questioned—the committee concerns itself forthwith because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters—rather it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.[40]

The Committee report noted that this new provision would amend prior practice to some degree. Even if the judicial process has not entirely run its course, such as when appeals are pending, the legislative branch will take notice of certain guilty pleas or verdicts against a Member until the presumption of innocence is reinstated or until the Member is reelected to the House subsequent to conviction:

> For the House to withhold any action whatever until ultimate disposition of a judicial proceeding could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period longer than the two-year term of the Member.
>
> Since Members of Congress are not subject to recall . . public opinion could well interpret inaction as indifference on the part of the House.

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[39] House Report No. 97-110, *supra*.

[40] House Report No. 94-76, 94th Cong., 1st Sess., p. 2.

> The Committee recognizes a very distinguishable link in the chain of due processs—that is, the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon a plea of guilty or upon conviction by a jury or by a judge (or judges) if jury trial is waived. It is to this condition, and only to this condition, that the proposed resolution is directed.[41]

It is apparent from proceedings in the 96th and 97th Congresses that the Committee and the full House may choose to initiate disciplinary action against a Member even though all appeals in the criminal process have not been exhausted. This was the case in four disciplinary proceedings against Members of the House in the 96th Congress and one in the 97th Congress.[42]

Code of Ethics for Government Service. Broad ethical guidelines for "all Government employees, including officeholders" are expressed in the "Code of Ethics for Government Service" adopted by the 85th Congress in 1958.[43] The specific guidelines and conduct standards are set forth in Appendix 2 of this manual. Among other things, the Code stresses that any person in Government service should

—adhere to the highest moral principles;

—give a full day's labor for a full day's pay;

—never discriminate by dispensing special favors;

—never accept favors or benefits that might be construed as influencing the performance of governmental duties;

—make no private promises binding on the duties of office;

—engage in no business with the Government inconsistent with the performance of governmental duties; and

—never use information received confidentially in the performance of governmental duties for making private profit.

The Code of Ethics for Government Service was adopted as a Concurrent Resolution[44] expressing the "sense of Congress" and thus, in itself, did not have any legally binding effect. Although a Concurrent Resolution technically expires at the end of the Congress in which it was adopted,[45] the ethical considerations expressed in the Code have been found to remain as established standards of conduct by which Members, officers, and employees should abide. Moreover, this Committee had concluded that, despite the technical expiration of the resolution, the ethical precepts expressed in it "represent continuing traditional standards of ethical conduct to be observed by Members at all times * * *."[46]

As to the practical applicability and enforcement of the provisions of the Code as actionable standards for congressional discipline, the Committee has noted that they are of a broad general nature "not delineated with any great exactitude." An evaluation of the circumstances of a particular matter on a case-by-case basis is required to determine legitimate charges of unethical conduct: "It was for the very purpose of evaluating particular situations against existing standards, and of weeding out baseless charges from legitimate ones, that this committee was created."[47]

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[41] *Id.*

[42] House Report No. 96-351, *supra;* House Report No. 96-856, *supra;* House Report No. 96-1387, *supra;* House Report No. 96-1537, *supra;* House Report No. 97-110, *supra.*

[43] 72 Stat., Part II, B 12.

[44] H. Res 175, 85th Cong.

[45] Riddick, "The United States Congress, Organization and Procedure," 1949, p. 21; "Deschler's Procedure," 1974, ch. 17, § 4.4; "Hinds Precedents of the House of Representatives," vol. V, § 7053, p. 1023, para. 1.

[46] House Report No. 94-1364, 94th Cong., 2d Sess., July 23, 1976, pp. 3, 7-8.

The Code of Ethics for Government Service has, in fact, provided the basis for formal charges against Members of the House. In one instance, charges concerning the use of a Member's official position for pecuniary gain and the receipt of benefits under circumstances that might have been construed as influencing official duties were heard before the Committee, resulting eventually in a reprimand of the Member by the full House of Representatives.[48] In other instances, these standards provided the basis for charges against Members in disciplinary proceedings that were eventually dropped as not having been sustained by the evidence[49] or terminated upon the resignation of the Members involved.[50]

Rules of Supervisors, Committees, Members, and Officers. It is important for employees of the House to check any additional rules, regulations, or practices that apply to the specific office or unit for which the employee works.

Advisory Opinions. Individuals are *urged* to contact the Committee on Standards of Official Conduct with any questions regarding the propriety of contemplated activity. Under House rules, the Committee is authorized "to give consideration to the request of any Member, Officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employees.[51] All Responses to such inquiries are confidential.

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[47] *Id.*, p. 8.

[48] House Report No. 94-1364, *supra*.

[49] House Report No. 95-1742, *supra*, pp. 3-4; House Report No. 96-930, *supra*.

[50] House Report No. 96-856, *supra*; House Report No. 96-1537, *supra*; House Report No. 97-110, *supra*.

[51] See, House Rule X, cl. 4(e)(1)(D).

Chapter 2: GIFTS, TRAVEL, ENTERTAINMENT, AND FAVORS

Highlights

Members, officers, and employees of the House may not receive

—gifts totaling $100 or more in a calendar year from any person or organization, such as a lobbyist, who has a direct interest in legislation before Congress, or from a foreign national or his agent. Gifts of over $50 are to be included for the aggregate yearly limit. Gifts to spouses and dependents are included unless given truly independent of the recipient's relationship to the Member, officer, or employee;

—any gift from a foreign government unless it is a souvenir or mark of courtesy of minimal value ($180) or meets other special circumstances approved by Congress;

—favors or benefits in circumstances that might create the appearance of influencing the performance of official duties; or

—any bribe or illegal gratuity, that is, anything of value in return for being influenced in, or as a reward for, performing official activities.

Under narrowly construed circumstances, Members and employees may accept travel expenses from unofficial sources when in consideration for substantial participation in an event or for fact-finding activities.

Members of the House may not treat receipts from fund raisers or testimonials as unrestricted personal gifts but rather *must* treat such receipts as campaign contributions, which may not be used for personal or official congressional purposes.

Members and employees of the House are generally cautioned to be

—wary of any gifts, entertainment, or favors offered to them by persons who are not relatives or personal friends, but which may be offered because of one's employment or position in the Congress;

—aware of the identity of any gift giver, his or her relationship to the Member or any official business, and possible motives for the action; and

—particularly cautious concerning the receipt of any gift over $50 in value, or gifts from any one source during a calendar year that total $100 in value.

Members and certain House employees must file annual financial disclosure reports, as discussed in detail in Chapter 7, which reveal the source and value of gifts received.

Chapter 2: GIFTS, TRAVEL, ENTERTAINMENT, AND FAVORS

Considering the representative nature of congressional offices, it is natural that pressures will be exerted upon Members and employees by concerned constituents. In addition, interest groups will exercise their powers of political persuasion, explanation, or argument on the merits of an issue to further a particular position. Aside from these legitimate activities, however, certain conduct intended to influence governmental action may raise ethical and legal concerns. Suspect activities include the bestowing of gifts, entertainment, and special favors upon decision-makers and their advisors by those with special interests.

In a 1951 report entitled "Ethical Standards in Government," a Senate subcommittee headed by Senator Paul H. Douglas discussed general ethical consideration concerning the receipt of gifts by public officials:

> . . . When is it proper to offer [gifts to] public officials and what is it proper for them to receive? A cigar, a box of candy, a modest lunch * * *? Is any one of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become immediately improper? Even small gratuities can be significant if they are repeated and come to be expected * * *.
>
> Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper * * *. The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the moment a doubt arises as to propriety, the line should be drawn. Innocence is perhaps lost when one is conscious that it exists.[1]

Congress has recognized the general premise that "public office is a public trust."[2] Members of Congress hold office to represent the interests of their constituents and the public at large. Similarly, officers and employees of the House are paid from United States Treasury funds to represent the interests of the general public rather than personal, private, or special interests. Members, officers, and employees are expected to exercise impartial judgment in performing their duties.[3] The receipt of gifts, entertainment, or favors from certain persons or special interests may interfere with this impartial judgment.

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[1] Report of a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 82d Cong., 1st Sess., "Ethical Standards in Government," p. 23.

[2] "Code of Ethics for Government Service," 72 Stat., Part II, p. B 12, H. Con. Res. 175, July 11, 1958.

Initially, a gift may create a conflict of interest for the recipient. A gift to a Member, employee, spouse, or dependent child may favorably influence official conduct towards a business or industry on account of the personal holding. As noted in a study of congressional ethics, "The giver's purpose is usually to create a situation in which the Member has a personal economic stake in common with the giver. Self-interest can then take its course."[4]

This type of ethical problem in gift giving and receiving was the basis for a congressional scandal in the 1860's when stocks of the Credit Mobilier Corporation were distributed at considerably below market value to several congressmen. The major congressional participants in the scheme were subjected to disciplinary proceedings in the Congress.[5]

The receipt of gifts by Members or employees of Congress raises another, more common, ethical problem because of the normal sense of gratitude in the recipient of a gift and expectations of favorable treatment or consideration that may arise in the giver. The problem may arise with even token favors or entertainment, particularly those given with some frequency or regularity. Even when no specific *"quid pro quo"* is present, the recipient may be predisposed to act more favorably toward the gift giver in some future situation or be influenced by a sense of obligation to "benefactors" who have done favors.[6]

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private or special interests may affect public confidence in the integrity of the individual, in the institution of the Congress, and in government in general. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests.

Members and employees of the House are thus cautioned to exercise discretion concerning the acceptance of any gifts, favors, or entertainment from persons who are not family members or personal friends. Gift recipients should be particularly sensitive to the source and value of a gift, the frequency of gifts from one source, and possible motives of the donor.

In addition to the general ethical problems raised by gift giving as discussed above, specific rules and restrictions are in force regarding the receipt of gifts, travel, and entertainment by Members, officers, and employees of the House.

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[3] *Id.*, at para 5; see also, *United States* v. *Podell*, 436 F. Supp. 1039, 1042 (S.D.N.Y., 1977), *aff'd* 572 F.2d 31 (2d Cir., 1978).

[4] *Congress and the Public Trust*, Association of the Bar of the City of New York, James C. Kirby, Exec. Dir., New York, 1970, p. 179.

[5] See, "House of Representatives Exclusion, Censure and Expulsion Cases from 1978 to 1973," Committee Print prepared for the Joint Committee on Congressional Operations, 93d Cong., 1st Sess., pp. 123-25.

[6] See, discussion in *Ethics in Government* by Paul H. Douglas, Cambridge, 1952, pp. 48-49.

Gifts from Lobbyists, Persons With Direct Interest in Legislation, and Foreign Nationals. House Rule XLIII, clause 4, part of the Code of Official Conduct, prohibits Members, officers, and employees of the House from accepting gifts aggregating $100 or more in a calendar year, directly or indirectly, from any person with a direct interest in legislation before Congress or from a foreign national. Gifts of $50 or less and gifts of personal hospitality are not included in the $100 aggregation, and gifts from relatives are excluded from the prohibition.[7]

This Committee in the 96th Congress, in recommending that the House censure a Member for financial misconduct, stated that charges relating to the acceptance of gifts from a person with a direct interest in legislation before Congress "are considered of a most serious nature by the Committee, as they establish the special interest of the donor in matters over which the donee had influence by virtue of his position in the U.S. Congress."[8] Citing violations of Rule XLIII, clause 4, among others, the House voted to censure the Members.[9]

What Does and Does Not Constitute a Gift. The Select Committee on Ethics of the 95th Congress adopted the following basic definition of the term "gift" for the purposes of House Rule XLIII, clause 4:

> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.[10]

Exceptions as to what would not be considered a prohibited gift are indicated in the language of the rule and addressed in several Select Committee advisory opinions.

Exemptions stated in the rule. In recommending changes in the Code of Official Conduct in the 95th Congress, the Commission on Administrative Review noted that exemptions were provided to "identify items which do not cause conflicts of interest and/or which impose unreasonably stringent limitations if not excluded."[11] Gifts valued at $50 or less are not counted toward the $100 aggregate. A predominant reason for this exemption was to relieve individuals of the burden of accounting for a specific "share" of events such as receptions.[12]

"Personal hospitality of an individual" may be accepted under the rule. The Commission on Administrative Review stated with respect to the exemption:

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[7] This threshold for aggregation was increased from $35 to $50 by H. Res. 5, 100th Cong., 1st Sess.; see, *Congressional Record*, Jan. 6, 1987, at H6-16 (daily ed.).

[8] House Report No. 96-930, 96th Cong., 2d Sess., *In the Matter of Representative Charles H. Wilson*, May 8, 1980.

[9] 126 *Congressional Record* 13801-13820, June 10, 1980.

[10] House Select Committee on Ethics Advisory Opinion No. 7, May 9, 1977. See, House Report No. 95-1837, 95th Cong. 2d Sess., "Final Report of the Select Committee on Ethics." (The texts of pertinent advisory opinions appear in full at the conclusion of this chapter.)

[11] H. Doc. 95-73, *supra*, n. 10, p. 14; see also, House Select Committee on Ethics Advisory Opinion No. 9, May 11, 1977.

[12] Debate, *supra*, n. 11, remarks by Congressman Obey, at 123 *Congressional Record* 5896.

> [T]he Commission understands personal hospitality to mean hospitality for a nonbusiness purpose by an individual, not a corporation or organization, on property or facilities owned by that individual or his family.[13]

During the debate on the revised rule, the view was expressed that the personal hospitality exemption would apply, for example, to dinner in an individual's home but not if the individual took the Member or employee to dinner at a restaurant.[14] Further, the exemption was *not* intended to apply if the individual providing the hospitality was being reimbursed by a corporation or organization.[15] Questions arose during the debate as to how a Member would know this. The reply was that a Member must "exercise due care" in receiving gifts of personal hospitality from those who have, or who represent those who have, an interest in legislation before Congress.[16]

Items not intended to be covered. The Select Committee found—on the basis of the language of Rule XLIII, clause 4, its legislative history, the absence of conflict of interest issues, and/or public policy considerations—that certain items were not intended to be covered. The following items are *generally* not gifts for the purposes of the rule:

(1) Bequests and other forms of inheritance;

(2) Loans made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid);

(3) Political contributions as defined by the Federal Election Commission and otherwise reported as required by law;

(4) Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments or political subdivisions thereof;

(5) Food, lodging, transportation and entertainment provided by a foreign government within a foreign country;

(6) Communications to a Member's offices in Washington and his district, including subscriptions to newspapers, magazines, and other periodicals;

(7) *Bona fide* awards presented in recognition of public service and available to the general public;

(8) Suitable mementos of a function honoring the Member, officer, or employee;

(9) Consumable products provided by home-state business to a Member's office that are primarily intended for consumption by persons other than the Member and his staff; and

(10) Food and beverages consumed at banquets, receptions, or similar events.[17]

In some instances, however, the donation of certain of these items to a Member or employee may fall under the gift rule. For example, the "subscription" exemption is intended to ensure Members access to information sources or reference tools useful in the conduct of official duties. Thus, this Committee has consistently restricted the exemption to publications containing news matter or scholarly works of a professional or technical nature. However, an additional courtesy copy of a publication, sent to a Member's home, has been deemed a gift because the Member would be receiving a benefit of value not generally available to the public.

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[13] H. Doc. 95-73, *supra*, p. 14.

[14] 123 *Congressional Record* 5897-5898.

[15] *Id.*

[16] *Id.*, remarks by Representatives Brown and Hamilton.

[17] Advisory Opinion No. 7, *supra*.

The gift rule was not intended to prohibit Members, officers, and employees from accepting offers made to the general public under circumstances where others not affiliated with Congress receive the same offer. However, an offer targeted specifically at House Members or employees (including sale of property at less than market value) would be viewed as a gift if made by an entity with a direct interest in legislation. Whenever it appears that the motivation of a donor is primarily to curry favor, influence official action, or give particular advantage to an individual Member or employee, caution should be exercised.

Substantial participation. By definition, compensation for services rendered is not a gift. The Select Committee on Ethics reasoned that transportation, food, and lodging provided a Member or employee and the individual's spouse in connection with a conference or similar event would not be considered gifts *if* the Member or employee *substantially participated* in the event. Accordingly, services must be rendered to the extent that such services constitute "equal consideration" for the expenses received, such as addressing an audience or engaging in seminars. Thus, the services must be more than perfunctory. Merely visiting a site would not be viewed as equal consideration.[18] The provider of any transportation-related expenses must be the sponsor of the event or acting on behalf of the sponsor in order for the travel to be deemed consideration for substantial participation. (*See,* "Investigation of Financial Transactions Participated In and Gifts of Transportation accepted by Representative Fernand J. St Germain", House Report 100-46, April 9, 1987, page 5.) Additionally, the Select Committee, in its *Final Report,* noted that the payment of travel expenses and waiver of an entrance fee for a Member of the House to participate in a celebrity or Pro-Am golf tournament would not be considered a gift "since the Member is, in effect, rendering a service on behalf of the foundation sponsoring the tournament." [19]

Fact finding. The Select Committee on Ethics also determined that necessary expenses (not entertainment) for a "fact-finding" tour, even when no services were rendered by a Member or employee, might not be a prohibited gift when the fact-finding even is *"directly related to official duties."* Such an event must *not* be for the personal pleasure or entertainment of Members or employees, but rather to allow them "to become better informed regarding subject matters closely related to their official duties." [20] The Select Committee noted that a fact-finding event for educational purposes might include an oil company sponsoring "an inspection tour of its offshore oil drilling platform," a lumber company arranging "a demonstration of new logging methods in a remote area," or a foreign foundation inviting Members to attend a program "designed to promote better understanding and improve U.S. relations with that country." [21]

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[18] House Select Committee on Ethics Advisory Opinion No. 2, Apr. 6, 1977, included in full at the conclusion of this Chapter.

[19] House Report No. 95-1837, *supra,* p. 9.

[20] House Select Committee on Ethics Advisory Opinion No. 8, May 11, 1977, included in full at the conclusion of this Chapter.

While the responsibility rests with the Member or employees to determine whether a particular event or activity is directly related to official duties, the Select Committee emphasized that "fact-finding event" is intended to be interpreted narrowly in the "spirit" of the House rules. Thus, the exemption would not cover an item such as free transportation from Washington to a Member's district on the grounds that corporate or other facilities there would be toured. Official allowances are provided to cover district travel expenses of both Members and their staff. The Select Committee also included travel expenses provided by representatives of the maritime industry to attend a ship-launching [22] and inaugural flights of airline routes [23] among examples of travel not considered fact-finding, and thus a gift under Rule XLIII, clause 4. Consistent with these interpretations, and in keeping with the letter and spirit of the Rule, the sponsor of a fact-finding trip should be directly and immediately associated with the event and location being visited. (See, House Rule XLIII, clause 2.)

This Committee has also interpreted fact-finding travel in light of House Rule XLV, which operates to prohibit the infusion of private resources—whether in-kind services or monetary—into the operation of a congressional office. Rule XLV is applicable to committees of the House, as well as individual Member offices. The purpose of fact-finding, as noted above, is to explore matters *directly related* to official duties. If, on the other hand, the purpose of an undertaking is to *perform* official duties, such as general oversight activities within a committee's jurisdiction, the cost should be borne by the committee or congressional office itself. Private subsidy of official activities is precluded by Rule XLV.

In the 99th Congress, this Committee undertook an inquiry into travel by a Member of the House on corporate aircraft. The Committee found that the Member had improperly accepted 21 free flights of official travel. Furthermore, with respect to 19 of these flights, the Member had sought and received reimbursement for automobile mileage for the same trips. Because the Member reimbursed, with interest, the corporation and the House for the flights and erroneously filed vouchers and because the Committee concluded that the Member apparently misunderstood the predicates to a proper voucher, no sanction was recommended.[24]

The Select Committee on Ethics noted that the expenses of a Member's or employee's spouse in an *overseas* fact-finding event may properly be accepted since it may be desirable for a spouse to attend for protocol and diplomatic reasons. However, the expenses of a spouse accompanying a Member on a *domestic* fact-finding trip would probably *not* be permissible and would thus be considered a gift under Rule XLIII, clause 4.[25]

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[21] *Id.*

[22] *Id.*

[23] House Select Committee on Ethics Advisory Opinion No. 3, April 6, 1977, included in full at the conclusion of this Chapter.

[24] "Investigation of Travel on Corporate Aircraft Taken by Representative Dan Daniel," House Report 99-470, 99th Congress, 2d Session.

Who Has a Direct Interest in Legislation. The prohibition in Rule XLIII, clause 4, applies to gifts "from any person (other than a relative) having a direct interest in legislation before the Congress * * *." The rule notes that such "interested" persons include registered lobbyists, officers or directors of registered lobby groups, and persons retained by such groups for the purpose of influencing legislation. However, both the report of the Commission on Administrative Review of the 95th Congress [26] and the debate preceding the enactment of the rule [27] made it clear that the reference to lobbyists was not intended to be all inclusive of those deemed to have a direct interest in legislation.

Pursuant to its authority under House Resolution 383, 95th Congress, to issue advisory opinions on the amended Code of Official Conduct, the Select Committee on Ethics found that not only entities lobbying Congress but also corporations, labor organizations, and other groups maintaining political action committees would be considered to have a direct interest in legislation.[28] As a general rule, gifts aggregating $100 or more should not be accepted from "any individual or organization which the Member or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.[29] Thus, the Select Committee in an earlier advisory opinion found that airline carriers, since they are regulated by the Federal Government, are considered to have a direct interest in legislation before the Congress.[30]

However, in its *Final Report,* the Select Committee emphasized that "the gifts limitation is not intended to interrupt or interfere with normal social relationships." If the recipient does not believe that the donor of the gift has a direct interest in legislation, then he or she should feel free to accept. Gifts over $100 would still be subject to disclosure requirements.[31]

Gifts to a Spouse or Dependents. House Rule XLIII, clause 4, prohibits receipt of gifts from "interested" persons or foreign nationals either "directly or indirectly." The Select Committee on Ethics noted that although the term "indirectly" may apply to gifts from agents of persons prohibited from giving directly, the term refers mainly to gifts to the spouse or dependents of a Member or an employee. Gifts to a spouse or dependent are considered an indirect gift to that Member or employee *unless* circumstances make it clear that a gift is truly independent of a spouse's or dependent's relationship to the Member or employee. Where truly independent status exists, considerations of privacy and equal rights control and no gift subject to Rule XLIII, clause 4, is considered as having been made to the member or employee.[32]

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[25] Advisory Opinion No. 8, *supra.*

[26] H. Doc. No. 95-73, 95th Cong., 1st Sess., "Financial Ethics."

[27] Debate on H. Res. 287, 95th Cong., 1st Sess., 123 *Congressional Record* 5898, 5935, Mar. 2, 1977.

[28] House Select Committee on Ethics Advisory Opinion No. 10, May 11, 1977.

[29] *Id.*

[30] House Select Committee on Ethics Advisory Opinion No. 3, *supra.*

[31] House Report No. 95-1837.

[32] Advisory Opinion No. 9, *supra.*

Simultaneous gifts, such as dinner or reception invitations to a Member (or employee) and the spouse or dependents, should be treated as separate gifts and need not be aggregated for the purposes of the $50 exclusion or the $100 maximum of the gift rule. Thus, for example, dinner invitations valued at approximately $30 each extended to a Member and spouse would be considered as two $30 gifts (thus falling under the $50 exemption) rather than one $60 gift.

Valuation of Certain Gifts. The Select Committee on Ethics offered other guidelines in its *Final Report* with respect to the valuation of certain gifts. For example, the gift of a ticket to a political fund-raising dinner should be valued at the *cost* of the dinner rather than the cost of the ticket to the purchaser. The value of a courtesy pass to an amusement park would be determined by the number of times the pass was actually used. Similarly, an honorary membership to a country club is valued according to its actual use. Thus, if the membership were never used, it would have no value. However, if the Member or employee and family regularly enjoyed the benefits of the country club, the membership gift would be valued at the rate of normal dues to that club. On the other hand, a gift of a season ticket to an athletic event or the theater is valued at the cost of the ticket, regardless if actually used, "since it is readily transferable." [33]

Effective June 11, 1987, the Committee adopted the following criteria for calculating the value of a gift of transportation on private aircraft.

> A. If the cities between which the Member is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of the aircraft is the cost of the first class ticket from the point of departure to the destination. If more than one first class fare is available (due to service by more than one carrier), the lowest first class fare will be used.
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> B. If the cities have regularly scheduled air service, but only a standard (coach) rate, then the value of the use of the aircraft is the coach rate. If more than one coach fare is available due to service by more than one carrier, the lowest coach fare will be used. No discount fares will be used, such as "supersaver" fares, for valuation purposes.
>
> C. If either the city from which the Member flies or his destination does not have regularly scheduled air service, then the value of the use of the aircraft is the cost of chartering the same or a similar aircraft for that flight.

The text of the Committee's letter advising Members of the policy appears in full at the conclusion of this chapter.

Gifts from Foreign Governments. The preceding discussion applies to foreign nationals as well as those with an interest in legislation before Congress. Special rules apply to gifts from foreign governments. Government officials, including Members and employees of Congress, are prohibited by Article I, Section 9, clause 8, of the United States Constitution, from receiving "any present . . .

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[33] House Report No. 95-1837, *supra*, p. 9.

of any kind whatever" from a foreign state or a representative of a foreign government without the consent of the Congress.[34] Congress has consented, through the vehicle of the Foreign Gifts and Decorations Act,[35] to the acceptance of gifts from foreign governments of minimal value [36] ($180) when tendered as a souvenir or mark of courtesy. Other such gifts may be accepted from foreign governments under special circumstances.

In addition to gifts of minimal value, the Foreign Gifts and Decorations Act allows the acceptance (but *not* the retention) of a gift of more than minimal value when refusal of the gift would cause offense or embarrassment or otherwise adversely affect United States foreign relations.[37] Such gifts, however, are considered accepted on behalf of the United States. Within 60 days of acceptance, they must be turned over to the United States for use or disposal.[38] Additionally, a Member or employee may accept gifts from foreign governments in the form of educational scholarship or medical treatment,[39] in connection with an approved cultural exchange program [40] and may accept payments for the cost of travel *totally outside* of the United States when it is deemed in the interest of the United States and approved by this Committee.[41]

Regulations concerning the prohibited and permissible receipt of gifts have been issued by this Committee.[42] The Committee has approved the acceptance of a gift of travel or expenses outside the United States when it relates "directly to the official duties of the Member, officer, or employee." [43] The regulations also allow the acceptance of travel by an accompanying spouse or dependents. The regulations specifically note, however, that travel or expenses "may not be accepted merely for the personal benefit, pleasure, enjoyment or financial enrichment of the individual or individuals involved." [44] Any such gift accepted by a Member or employee must be disclosed within 30 days after acceptance, and tangible gifts of more than minimal value must be disclosed at the time of deposit of the gift with the Government.

In applying these limitations, it is important to note that "quasi-governmental" organizations closely affiliated with, or funded by, a foreign government are covered, as are any international or multinational organizations with membership comprised of foreign governments.

Fund Raisers and Testimonials. House Rule XLIII, clause 7, provides that any proceeds from testimonial dinners or other fund-raising events for a Member are to be treated as campaign contributions, subject to all the restrictions on campaign funds. Such funds must be disclosed as required by Federal Election Commission regulations [45] and used by the Member *only* for *bona fide* campaign purposes.[46] The money may not be treated as unrestricted personal gifts. Specifically, campaign funds under the House rules may not be converted to personal use [47] nor be used for official congressional purposes.[48]

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[34] A similar prohibition on the acceptance of "emoluments," or compensation, is discussed in Chapter 3.

[35] 5 U.S.C. §7342, as amended by P.L. 95-105.

[36] 5 U.S.C. §7342(c)(1)(A) and (a)(5); 46 F.R. 51389, Oct. 20, 1981; see, 41 C.F.R. §101-49.001-5.

[37] 5 U.S.C. §7342(c)(1)(B).

[38] 5 U.S.C. §7342(c)(2).

[39] 5 U.S.C. §7342(c)(1)(B).

[40] 22 U.S.C. §2458a.

[41] 5 U.S.C. §7342(c)(1)(B)(ii).

[42] House Committee on Standards of Official Conduct, Regulations for the Acceptance of Decorations and Gifts, Including Travel or Expenses for Travel, by Members, Officers, and Employees of the House of Representatives; the Regulations were first published Jan. 23, 1978, at 124 *Congressional Record* 452-3; they are contained in Appendix 8 of this manual.

[43] *Id.*, §6(e).

[44] *Id.*

The restriction of Rule XLIII, clause 7, derives from H. Res. 287, 95th Congress, 1st Session. The rule had formerly allowed Members to use such proceeds for other than campaign purposes if advance notice had been given to the participants in the fund raiser. In recommending the change, the Commission on Administrative Review stated: "Proceeds from testionial dinners should not be converted to funds for personal use under any circumstances."[49]

The House Select Committee on Ethics determined that a direct mail solicitation by a Member or a Member's spouse constituted a "fund-raising event" for the purposes of Rule XLIII, clause 7. Proceeds from such a solicitation must be treated as campaign contributions that may not be converted to personal use by the Member. In reaching this decision, the Select Committee noted that a major purpose of revisions to the Code of Official Conduct was to prevent Members from "cashing in" on their official position in the Congress:

> In the age of computerized mass mailings, it is unnecessary for people to gather together in a common place on a particular date to constitute a "fund-raising event."
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> * * * * *
>
> A major thrust of the provisions contained in the new House Rules adopted March 2, 1977, was to severely limit the potential for Members to "cash in" on their positions of influence for personal gain. Therefore, a limitation on outside earned income was proposed and adopted. A proposal to abolish unofficial office accounts was offered and adopted. A proposal to prohibit the conversion of political funds to personal use was adopted. And the proposal discussed above to treat all proceeds from fundraising events as campaign contributions was also adopted. Therefore, it would appear that a proposal to solicit funds for personal use would be contrary to the "spirit" of the House Rules adopted purusant to H. Res. 287 [see: H. Rule XLIII(2)].[50]

The Select Committee on Ethics also found that a Member may not accept proceeds for unrestricted personal use from a fund raiser that is conducted by a group independent from the Member:

> [I]t is irrelevant whether the Member himself solicits these funds, or whether the Member accept funds for personal

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[45] Title 11, C.F.R.

[46] House Rule XLIII, cl. 6; see, Chapter 8 of this manual, dealing with use of campaign funds.

[47] House Rule XLIII, cl. 6; see also, 2 U.S.C. §439a as amended by P.L. 96-187.

[48] House Rules XLV and XLVI, cl. 4.

[49] H. Doc. 95-73, *supra*.

[50] House Select Committee on Ethics Advisory Opinion No. 4, Apr. 6, 1977; (the opinion is included in full at the conclusion of Chapter 8).

use that are solicited on his behalf by an independent committee.[51]

Money raised through fund raisers may be used as a Member's "legal defense fund" to pay legal expenses arising out of the performance of official duties or one's campaign and election. Such a use of funds would generally be considered "campaign related" and not personal. Such funds must be treated as campaign contributions and thus would be subject to all the restrictions and prohibitions of other campaign contributions, including the reporting requirements, contribution limitations, and prohibitions on corporate, labor union, and Government contractor contributions. Such treatment is also consistent with rulings of the Federal Election Commission. In certain instances, the Committee has permitted funds raised for legal defense to be considered gifts, and thus subject to the limits of House Rule XLIII, clause 4. The Committee should be consulted whenever establishment of a legal defense fund is contemplated.

Appearances of Influence. In addition to specific prohibitions on amounts and sources of gifts, a general ethical standard recognized by the House notes that Members and employees should not accept favors or benefits for themselves or their families "under circumstances which might be construed by reasonable persons as influencing the performance of [their] governmental duties." [52] Taken into consideration in the application of this standard would be the nature, source, and amount of the favor or benefit, possible conflicts of interest with official duties, and possible favoritism exhibited towards the donor.[53] This standard of conduct would thus encompass the general principles discussed above concerning the receipt of gifts and emphasizes the need for caution and discretion on the part of Members and employees in accepting any gift, favor, or benefit that would not have been offered "but for" the individual's position in Congress. In a report filed in the 100th Congress, the Committee admonished all Members "to avoid situations in which even an inference might be drawn suggesting improper action"[54]

Bribery. When gifts, money, or other things of value are received by a public official, including a Member or employee of the House, in return for being influenced in the performance of official duties or because of any official act, then a violation of the Federal bribery statute may be present. Two clauses specifically prohibit a Federal official from "corruptly" receiving or asking for "anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act" ("bribery"—18 U.S.C. § 201(c)) and from receiving anything of value other than "as provided by law . . . for or because of any official act performed or to be performed by him" ("illegal gratuity"—18

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[51] House Select Committee on Ethics Advisory Opinion No. 11, May 11, 1977; (the opinion is included in full at the conclusion of chapter 8).

[52] 72 Stat., Part II, p. B 12, para. 5; note, House Report No. 94-1364, 94th Cong., 2d Sess.

[53] See, House Report No. 96-930, *supra*, at pp. 19-20, re Statement of Alleged Violations, and pp. 4-5, Rationale and Votes. See also, House Report No. 96-856, 96th Cong., 2d Sess., *In the Matter of Representative Daniel J. Flood*, Mar. 26, 1980, pp. 5-16, re Statement of Alleged Violations.

[54] *Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rept. 100-46, 100th Cong., 1st Sess., April 9, 1987, pp. 3, 9, and 43.

U.S.C. § 201(g)). The distinguishing features of the two sections were discussed by the United States District Court of Appeals for the District of Columbia:

> The bribery section makes necessary an explicit quid pro quo which need not exist if only an illegal gratuity is involved; the briber is the mover or producer of the official act, but the official act for which the gratuity is given might have been done without the gratuity, although the gratuity was produced because of the official act.[55]

Both clauses require as an element of the offense that the thing of value received or solicited by the official be related in some manner to an official act done or to be done by the officer or employee, that is, it must be either "in return for being influenced in" or "for or because of" an official act. The element—that the thing of value received relate to some official act—distinguishes a bribe or illegal gratuity from a mere gift that, as generally defined, is a "voluntary transfer" of property "made gratuitously, and not upon any consideration . . .[56] A gift, therefore, would not have been received with the requisite connection to any official act.[57]

Somewhat akin to the bribery statute at 18 U.S.C. § 201 is 18 U.S.C. § 203, which prohibits House Members and employees from receiving anything of value as compensation for "services rendered" or to be rendered, either by himself or another, before a Federal agency, department, or bureau. Thus, even if acts were proper or within the official capacity of the Member or employee, the offense would arise in the receipt of compensation, other than one's congressional salary, for such acts.[58] The receipt of things of value for supporting someone for, or using one's influence in obtaining for someone, a Federal job is specifically prohibited by 18 U.S.C. § 211. Thus, caution should be exercised in the receipt of gifts, favors, contributions, or entertainment from persons whom the Member or his staff has assisted with job applications or other dealings with the agencies of the Federal Government.

In the 96th and 97th Congresses, findings, allegations, or convictions concerning bribery, illegal gratuities, and/or the receipt of money for exercising influence in Congress resulted in the expulsion of one Member from Congress [59] and the initiation of disciplinary proceedings against three others. These proceedings were eventually discontinued because of the resignations of the Members involved.[60]

Financial Disclosure. Under the Ethics in Government Act of 1978, as detailed in Chapter 7, Members and certain employees of the House must disclose information in annual financial statements, including the donor, the amount of gifts aggregating $100 or more from a single source, and the nature of gifts of transportation, lodging, food, or entertainment aggregating $250 or more from a single source.[61] Information on certain gifts received by the spouse or dependent of the Member or employee may also need to be filed.[62] Additionally, as noted above, tangible gifts of over minimal value that may be received from foreign governments must be disclosed at the time such gifts are required to be turned over to the United States, that is, within 60 days of receipt; and gifts from foreign governments of travel or expenses for travel outside the United States must be reported within 30 days of receipt.[63]

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[55] *United States* v. *Brewster,* 506 F.2d 62, 72 (1974).

[56] *Black's Law Dictionary,* 4th Ed., p. 817.

[57] *United States* v. *Brewster, supra.*

[58] *May v. United States,* 175 F.2d 994 (1949), *cert. den.* 338 U.S. 830 (1949).

[59] See, House report No. 96-1387, 96th Cong., 2d Sess., *In the Matter of Representative Michael J. Myers,* Sept. 24, 1980, pp. 3-5, 126 *Congressional Record* 28953-28978. Oct. 2, 1980.

[60] House Report No. 96-856, *supra.,* n. 50; House Report No. 96-1537, 96th Cong., 2d Sess., *In the Matter of Representative John W. Jenrette, Jr.;* House Report 97-110, 97th Cong., 1st Sess., *In the Matter of Representative Raymond F. Lederer.*

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[61] P.L. 95-521, Sec. 102(a)(2); 2 U.S.C. § 702(a)(2).

[62] P.L. 95-521, Sec. 102(d)(1)(B) and (c); 2 U.S.C. § 702(d)(1).

[63] Regulations pertaining to foreign gifts, *supra.*, n. 41.

Appendices to Chapter 2

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 7

SUBJECT

Definition of a gift for purposes of House Rule XLIII, clause 4.

REASON FOR ISSUANCE

The Select Committee has received a number of inquiries concerning the definition of the word "gift" and application of the provisions of House Rule XLIII, clause 4 pertaining to acceptance of gifts.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 was amended in March 1977, to provide that "a Member, officer, or employee of the House shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress, or from a foreign national." Specifically exempted from this provision are: (1) gifts from relatives; (2) gifts valued at $35 [1] or less; and (3) gifts of personal hospitality of an individual.

The Commission on Administrative Review, in its report on Financial Ethics (H. Doc. 95-73, February 14, 1977) recommending the Rules changes that were enacted by the House, specified that bequests and other forms of inheritance should not be considered gifts for purposes of the new Rule, and explained personal hospitality to mean "hospitality extended for a non-business purpose by an individual, not a corporation or organization, on property or facilities owned by that individual or his family." Additionally, it is understood that loans and campaign contributions are not considered to be gifts.

Other than the exemptions specified in the Rule and the legislative history, there is no precise definition of what consitutes a gift for purposes of Rule XLIII, clause 4. The House recognized the likelihood that Members, officers and employees would need guidance on the definition of terms used in the new House Rules, and therefore passed H. Res. 383 which authorized the Select Committee to issue advisory opinions providing such guidance and interpretation respecting the application of the Rules.

The Select Committee begins with the proposition that the basic legal definition of a gift should be used in applying the provisions of Rule XLIII, clause 4, as follows:

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[1] This threshold for aggregation was increased from $35 to $50 by H. Res. 5, 100th Cong., 1st Sess.; see, *Congressional Record*, Jan. 6, 1987, at H6-16 (daily ed.).

> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

This definition is implicit, for example, in the Select Committee's Advisory Opinion #2, which states that necessary expenses provided a Member in connection with an event in which he "substantially participates," i.e., renders consideration of equal value, do not constitute a gift.

The Select Committee finds that there are certain categories of gifts that were never intended to be covered under the Rule XLIII, clause 4 limitations on acceptance of gifts. These are items that do not present potential conflicts of interest or are related to a Member's official duties. For these reasons, Rule XLIII, clause 4 is not applicable to the following categories of gifts:

> Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments and political subdivisions thereof. Members, officers, and employees are frequently invited to various functions paid for or sponsored by such government agencies. It was not the intent of these gifts limitation to prohibit Members, officers and employees from participating in such events. Even if the individual is not fully participating, but is simply present, for example, at a groundbreaking ceremony or a banquet honoring newly-elected officials, it would serve no purpose to preclude such activities.
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> Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country. The Foreign Gifts and Decorations Act was amended by PL 95-105 to give consent of Congress to acceptance of gifts of travel or expenses for travel provided by a foreign government for travel taking place entirely outside the United States. Any such gifts of travel expenses must be disclosed to the Committee on Standards of Official Conduct within thirty days after departure from the donor country. Since such gifts from a foreign government are subject to these statutory requirements, they are exempted from the prohibitions of Rule XLIII.
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> Communications to a Member's offices in Washington, D.C. and his district, including subscriptions to newspapers, magazines, and periodicals. Members are traditionally provided free subscriptions to weekly news magazines, newspapers, interest group journals, and other publications which are useful as information sources or reference tools in the conduct of the Member's official duties. In many cases, these publications are provided by organizations with a direct interest in legislation and could exceed $100 in value in a calendar year, particularly if postage is added (e.g., local newspapers). It would be inappropriate and contrary to the public interest to prohibit Members from receiving these materials and might impinge on the rights of citizens to communicate with their Representative. The Select Committee emphasizes that this finding applies pri-

marily to free subscriptions to publications, and not to individual items of considerable value, such as a set of encyclopedias or rare books.

Bona fide awards presented in recognition of public service and available to the general public. A Member, officer, or employee should be permitted to accept an award valued at more than $100 from an organization so long as the award is not contrived for one special occasion and is available to the general public.

A suitable memento of a function held in honor of the Member, officer, or employee. A Member, officer, or employee should be permitted to accept a suitable memento of reasonable value. However, the Committee emphasizes that a "suitable memento" would not include items such as cash, a television set, or automobile.

Consumable products provided by home-state businesses to a Member's office but which are primarily intended for consumption by persons other than the Member and his staff. Members have traditionally recevied gifts of consumable items (e.g., cigarettes, peanuts, etc.) from businesses in their home states. These consumable products are usually passed on to constitutents and other visitors to the office and are therefore not considered by the Committee to be gifts to the Member or his staff. This applies only to gifts of consumable items, and only when such items are consumed primarily by persons other than the Member and his staff.

Food and beverage consumed at banquets, receptions, or similar events. This exemption does not apply to dinners for small groups at restaurants or other such private affairs.

SUMMARY OPINION

For purposes of Rule XLIII, clause 4, a gift is defined as follows:

> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

The Select Committee finds, based on the language of new Rule XLIII, clause 4, the Rule's legislative history, the absence of confict of interest issues, and/or public policy considerations, that the following items are not gifts for purposes of Rule XLIII, clause 4:

(1) Bequests and other forms of inheritance;

(2) Loans made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid);

(3) Political contributions as defined by the Federal Election Commission and otherwise reported as required by law;

(4) Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments or political subdivisions thereof;

(5) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country;

(6) Communications to a Member's offices in Washington and his district, including subscriptions to newspapers, magazines, and other periodicals;

(7) Bona fide awards presented in recognition of public service and available to the general public;

(8) Suitable mementos of a function honoring the Member, officer, or employee;

(9) Consumable products provided by home-state businesses to a Member's office that are primarily intended for consumption by persons other than the Member and his staff;

(10) Food and beverages consumed at banquests, receptions, or similar events.

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 10

SUBJECT

Who has a direct interest in legislation before the Congress?

REASON FOR ISSUANCE

The Select Committee has been requested to issue interpretive guidelines concerning who has a "direct interest in legislation before the Congress" for purposes of applying House Rule XLIII, clause 4.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 provides, in effect, that a Member, officer, or employee shall not accept gifts aggregating over $100 in value in any calendar year from any party with *a direct interest in legislation before the Congress.* This Rule has restricted gifts to Members since its adoption in 1968, when it prohibited Members, officers, and employees from accepting gifts of "substantial value" from any party with a direct interest in legislation before the Congress. However, the term "direct interest in legislation" was neither defined nor discussed in the legislative history surrounding Rule XLIII, and clause 4, itself was essentially unenforceable because of the totally subjective nature of the term "substantial value."

On March 2, 1977, the House amended Rule XLIII, clause 4 by defining the term "substantial value" to mean gifts aggregating over $100 in a calendar year. The Commission on Administrative Review, in its report recommending that the Rule be amended (H. Doc. 95-73, February 14, 1977), noted that under the old Rule it was very difficult to define precisely who has a direct interest in legislation before Congress, since almost every citizen has such an interest. The Commission recommended that:

> . . . the term "direct interest" should be defined so that it includes, but is not limited to, any person or organization who must file under the Federal Lobbying Act of 1946 or its successor statute.

Therefore, H. Res. 287 amended House Rule XLIII, clause 4, to read, in part:

> Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

The Select Committee also believes that any person, organization, or corporation which retains or employs a lobbyist should be deemed to have a direct interest in legislation. However, the Commission's report also noted that others, in addition to registered lobbyists, may well have a direct interest in legislation before the Congress, and that Rule XLIII, clause 4 should be interpreted in such a way that Members are "alerted to the need to exercise care in accepting gifts aggregating over $100 in any calendar year from all sources."

The issue before the Select Committee is to clarify the term "direct interest in legislation before the Congress." The Congress, by the very nature of the institution, represents individuals and groups with a direct interest in legislation. Taxpayers anticipating a rebate, parents petitioning for day care centers, etc., communicate with Members of Congress concerning legislation of interest to them. In one sense, therefore, most citizens have a "direct interest in legislation before the Congress." But it is not the intent of Rule XLIII, clause 4 to bar all gifts valued at more than $100 from concerned citizens interested in federal legislation.

The problem for the Select Committee is to delineate to the extent possible the point at which individuals or organizations are transformed from being "concerned citizens" to those having a "direct interest" in legislation, placing them in a class of donors from whom Members may not accept certain gifts valued at more than $100.

Beyond registered lobbyists and persons or organizations which employ lobbyists, there is another group of clearly identifiable individuals and organizations that have a direct interest in the legislative process, i.e., organizations which maintain a separate, segregated fund for political purposes (a Political Action Committee as defined in Sec. 321 of the Federal Election Campaign Act of 1971) and the officers or directors of such organizations. Additionally, consistent with FEC regulations, any subordinate or affiliated organization of a "parent" organization which maintains such a Political Action Committee should certainly also be deemed to have a direct interest in legislation before the Congress for purposes of Rule XLIII, clause 4. Of course, persons who simply contribute to such a political fund would not be included within this category.

However, there are clearly a number of individuals and groups which neither retain paid lobbyists nor maintain a Political Action Committee, yet have a very direct and substantial interest in legislation before the Congress. With this understanding, the Select Committee believes that Members should not accept gifts aggregating over $100 in value from any individual or organization that the Member knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public. In this context, the Select Committee emphasizes the clear statement of intent issued by the Commission on Administrative Review that Members should be *"alerted to the need to exercise care . . . in accepting gifts from all sources"* (emphasis added). Implict in this admonition is the understanding that while individuals often receive gifts from non-relatives, and occasionally from organizations, it is rare that such gifts are valued at more than $100. Therefore, unless such a gift is from a close personal friend, it is likely offered because of the Member's position as a United States Representative.

The Select Committee also notes that appropriate exceptions have been made for purposes of Rule XLIII, clause 4 to allow acceptance of certain categories of gifts, as set forth in Advisory Opinion #7, even if such "gifts" are valued at more than $100. Thus, the Committee reiterates that a Member, officer, or employees should be most careful before accepting other forms of gifts from any source.

However, if the Member does not believe that the donor of the gift has a distinct or special interest in the congressional legislative process which sets him clearly apart from the general public, then the Member should feel free to accept such gifts. Of course, gifts aggregating over $100 from one source must be disclosed in accordance with the new financial disclosure requirements of the Ethics in Government Act (PL 95-521).

Finally, the question arises as to when legislation is considered to be "before the Congress." A narrow construction might be confined to an interest in a specific piece of legislation then pending before at least one subcommittee, or any other subdivision, of either House. If the Congress were not in session, for instance, no legislation would be before it, and unlimited gifts (subject only to disclosure requirements) might then flow freely to favored legislators. Also, if the Congress were in session, but the "direct interest" was in having a particular piece of proposed legislation introduced, a narrow construction of the prohibition might lead to the conclusion that the legislation was *not yet* "before the Congress."

Clearly, in either of the two foregoing instances, a result incongruous with the entire purpose of the gift restriction would occur. When this purpose is the reduction of the tendency of certain types of gifts to affect legislative action, then a narrow reading would invite a subversion of attempts at achieving that goal.

Therefore, the phrase, "legislation before the Congress" should be read broadly to include an ongoing special interest in affecting the legislative process.

SUMMARY OPINION

For purpose of House Rule XLIII, clause 4, the following individuals and organizations are deemed to have a direct interest in legislation before the Congress:

> (1)(a) Any person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute; and any person who is an officer or director of a registered lobbyist, or a person who has been employed or retained by a registered lobbyist for the purpose of influencing legislation before the Congress;

(b) Any person, organization, or corporation which employs or retains a registered lobbyist;

(2) Any corporation, labor organization, or other organization which maintains a separate, segregated fund for political purposes (Political Action Committee as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 441b)); any subordinate or affiliated organization thereof; and the officers or directors of such organizations; and

(3) Any other individual or organization which the Member, officer, or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 2

SUBJECT

Applicability of House Rule XLIII, clause 4, to reimbursement or payment of necessary expenses associated with a conference, meeting, or other similar event in which a Member, officer, or employee of the House participates.

REASON FOR ISSUANCE

Members have raised a number of questions concerning the definition and application of the gifts provisions as set forth in House Rule XLIII, clause 4. An advisory opinion has been requested as to whether the reimbursement or receipt of expenses connected with events in which a Member, officer, or employee participates constitutes a gift.

BACKGROUND

House Rule XLIII, clause 4, establishes, in effect, that Members, officers, or employees of the House shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any individual, organization, or corporation with a direct interest in legislation before the Congress, or from a foreign national.

In most cases, an individual's expenses for a meeting or conference, including transportation, food, and lodging, would exceed the aggregate figure of $100. Additionally, many sponsoring organizations, domestic or foreign, would have an interest in legislation before the Congress. However, necessary expenses should not be considered to be a "gift" to a participating individual who renders personal services sufficient to constitute "equal consideration" for the expenses provided by the sponsoring organization. Conversely, it should be noted that the services rendered must be more than perfunctory in nature to constitute equal consideration for the expenses involved. For example, addressing an audience at an event or engaging in discussion seminars would be considered substantial participation sufficient to constitute "equal consideration," while simply visiting a specific site or location as part of a "fact-finding tour" would probably not be viewed as "equal consideration" for expenses paid by a sponsoring organization.

A similar philosophy of exempting expenses for participation in an event is recognized in clause 3 of House Rule XLVII, which excludes travel, lodging, and meals from calculation of the honorarium paid for a speech or appearance.

A separate question surrounds the reimbursement or payment of similar expenses for the spouse of a Member, officer, or employee. If a sponsoring organization pays the spouse's expenses to attend an event in which the Member participates, would those expenses constitute a gift to the Member under clause 4 of Rule XLIII? Rule XLIII does not specifically address this question. But as a matter of precedent, Federal Election Commission regulations exclude payment of expenses for a spouse as a portion of the honorarium received by a Member, officer, or employee. As a matter of policy, the ability of the spouse to accompany a Member to such events has many positive benefits. If House Rules are interpreted so as to prevent reimbursement of a spouse's travel, food, and lodging expenses, the incentive for Members to participate in meaningful programs will be diminished.

SUMMARY OPINION

A Member, officer, or employee of the House (and the individual's spouse or another family member) may be paid or reimbursed for transportation, food, and lodging expenses when such expenses are directly associated with a conference, meeting, or similar event in which the Member, officer, or employee substantially participates. Such reimbursements or payments aggregating $250 or more from one source would be disclosed in accordance with the provisions of section 102(2)(C) of the Ethics in Government Act (PL 95-521).

Select Committee on Ethics Advisory Opinion No. 8

SUBJECT

Applicability of House Rule XLIII, clause 4 to acceptance of necessary expenses paid by an organization in connection with a fact-finding event which is directly related to the official duties of a Member, officer, or employee.

REASON FOR ISSUANCE

The Select Committee has received numerous inquiries concerning whether a Member, officer, or employee may accept payment or reimbursement for necessary expenses from an organization sponsoring a fact-finding event.

BACKGROUND

Members, officers, and employees of the House of Representatives are often invited by independent foundations, corporations, unions and other non-governmental organizations, both foreign and domestic, to attend a "fact-finding" event which is intended for educational purposes, directly related to their official duties.

For example, an oil company may sponsor an inspection tour of its offshore oil drilling platform, or a lumber company may arrange a demonstration of new logging methods in a remote area. Similarly, a foreign foundation may invite Members and employees to attend an educational program designed to promote better understanding and improve U.S. relations with that company.

The applicable House Rule regarding fact-finding events in Rule XLIII, clause 4, which provides that a Member, officer or employee shall not accept gifts [1] in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress, or from a foreign national. In many instances, the sponsoring organization of a fact-finding tour or similar activity would be deemed to have a direct interest in legislation before the Congress, and the travel expenses provided by the organization would alone exceed $100.

DISCUSSION

Although there has been some criticism regarding abuses of "fact-finding tours" in the past, the Select Committee finds that it would be contrary to the public interest and the intent of Rule XLIII to prohibit Members, officers and employees from attending fact-finding events or activities which have a legitimate purpose directly related to the official duties of the Congress. The Committee also notes the precedent in current law (22 U.S.C. 2451-2) which allows federal employees to accept travel expenses paid by foreign governments in connection with a trip which is for an educational or cultural purpose and is so certified by the State Department.

Therefore, the Select Committee holds that *necessary expenses* paid by an organization sponsoring a fact-finding event are exempted from the limitations of Rule XLIII, clause 4, provided that the fact-finding event or activity is directly related to the official duties of the Member, officer, or employee. Any such reimbursement or payment of travel expenses aggregating over $250 in value from one source would be subject to disclosure under the requirements of the Ethics in Government Act (PL 95-521). This public disclosure will guard against the potential abuse of converting this kind of activity from an official business purpose to that of personal pleasure or entertainment. Gifts of that nature exceeding $100 in value were clearly intended to be prohibited by Rule XLIII, clause 4.

This exemption also applies to necessary expenses for the spouse of a Member, officer, or employee in the case of foreign travel. The Committee recognizes that the ability of a spouse to accompany a Member on a foreign trip is often a matter of protocol and therefore has diplomatic value. However, the Committee does not believe that there would be many instances in which the presence of the spouse would be necessary or appropriate in the case of domestic fact-finding events.

The Committee notes that the phrase "fact-finding event or activity" does not apply to situations where expenses are provided in consideration of personal services rendered. In those cases where the purpose of a Member's trip is to provide such services as delivering a major speech to a convention, necessary expenses are not considered to be a gift (see advisory Opinion #2, issued April 6, 1977). In comparison, although a Member of Congress may render some personal services in the course of a fact-finding event, the primary purpose of the trip is for the Members, officers, or employees to become better informed regarding subject matters closely related to their official duties.

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[1] In advisory Opinion No. 7, the Committee held that Rule XLIII, clause 4 does not apply to travel expenses provided on an official basis by federal, state or local governments, or provided by a foreign government within a foreign country

Additionally, the Select Committee emphasizes that the definition of a "fact-finding event" must be interpreted narrowly. House Rule XLIII, clause 2 puts Members on notice that not only the "letter" but also the "spirit" of House Rules must be adhered to. Therefore, since Members are already provided travel expenses to and from their own districts, a Member should not accept free transporation on a corporate jet or commercial flight from Washington to his district, on grounds he would "tour" the corporate facilities there. Neither would the exemption apply, for example, to travel expenses by representatives of the industry to attend a ship-launching.

The intended definition of a fact-finding event would also not extend to expenses incurred during such an event which are unrelated to the specific fact-finding activity. For example, if a Member spends two days attending an educational event in a foreign country and then spends several more days touring that country at his leisure, the expenses associated with the sight-seeing tour would not be exempted from the Rule. Similarly, this exemption for fact-finding activities applies only to *necessary expenses* (transportation, food, and lodging) and not to entertainment. Thus, a Member of Congress, whether traveling on a fact-finding tour or under any circumstances, may not accept gifts of entertainment from groups with a direct interest in legislation beyond the $100 limit imposed by Rule XLIII.

The Committee also emphasizes that to qualify for the exemption, the fact-finding event or activity must bear a direct relationship to official duties. The responsibility will rest with the Member, officer, or employee to determine whether the particular event or activity is intended for fact-finding purposes directly related to his official duties.

SUMMARY OPINION

A Member, officer, or employee of the House (and the individual's spouse in the case of foreign travel) may be paid or reimbursed for transportation, food, and lodging expenses provided by the sponsor of a fact-finding event or activity which is directly related to official duties. Such reimbursements or payments aggregating $250 or more in value from one source would be disclosed in accordance with the provisions of section 102(2)(C) of the Ethics in Government Act (PL 95-521).

The Committee emphasizes that this holding has no bearing on any constitutional or statutory prohibition regarding acceptance of gifts from foreign governments or their representatives.

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 9

SUBJECT

Definition of an indirect gift for purposes of House Rule XLIII, clause 4.

REASON FOR ISSUANCE

The Select Committee has received a number of requests for an advisory opinion interpreting what constitutes an "indirect gift" to a Member, officer, or employee for purposes of applying the new gifts provision in House Rules.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 provides that a Member, officer, or employee shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress.

The word "indirectly" has principal reference to gifts to the spouse or dependent of a Member, officer, or employee of the House of Representatives.[1] For example, if a Member would be personally barred from receiving a color television set from a registered lobbyist, obviously it would not be appropriate for the Member's spouse or dependents to receive such a gift. Therefore, as a general rule, gifts received by the spouse or dependent of a Member, officer, or employee of the House from a party with a direct interest in legislation before the Congress would be considered to be indirect gifts to the Member, officer, or employee. Failure to so apply the gifts provision to spouses and dependents could cause the intent of the Rule to be easily defeated. The issue is not simply one of preventing circumvention of the gifts provision, but also a common sense recognition that assets and holdings of a spouse and dependents are generally considered to be shared by the partner, i.e., the Member, officer, or employee. However, in finding that the gifts to a spouse or dependent generally constitute an indirect gift to a Member, officer, or employee because of the nature of the relationship involved, the Select Committee is well aware that where a truly independent status is identified, considerations of privacy and equal rights should be controlling.

Therefore, the following guidelines are set forth by the Select Committee to clarify when gifts to spouses and dependents would not be considered as indirect gifts to the Member, officer, or employee of the House for purposes of Rule XLIII, clause 4.

A spouse or dependent may frequently receive a gift from an employer or another person which is prompted by recognition of their services, friendship, or some other consideration unrelated to the official responsibilities of the Member, officer, or employee. When it is clear that such gifts are truly independent of the Member, officer, or employee and would have been offered regardless of the donee's relation to that person, such gifts would not be considered as indirect gifts for purposes of Rule XLIII. However, when it is apparent that the gift may not have been offered *but for* the donee's relation to a Member, officer, or employee, such a gift would constitute an indirect gift to the Member, officer, or employee.

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[1] The word "indirectly" also refers to gifts received by a Member, officer, or employee through or from a third party. For example, a Member or employee could not accept a gift from an agent of a person with a direct interest in legislation before the Congress who had actually paid for the gift.

An additional clarification that has been requested concerns the treatment of "simultaneous gifts" to a Member, officer, or employee and his spouse or dependents. For example, an individual or organization with a direct interest in legislation before the Congress may well invite a Member's family to a dinner or reception. The question is whether such gifts should be aggregated or considered as separate gifts in relation to the provision of Rule XLIII, clause 4 which exempts all gifts valued at $35* or less. For example, the question has been raised: "Would a dinner costing $20 each for a Member and his spouse be considered as one $40 gift or as two $20 gifts (thus falling under the $35* exemption)?"

The legislative history of the amendment to Rule XLIII, clause 4 clearly indicates that the intent of the "de minimis" exemption for gifts of less than $35* in value was to avoid imposing excessively burdensome recordkeeping requirements and to ignore insubstantial gifts which do not present any potential conflict of interest. Furthermore, it would seem to serve no public policy consideration to prohibit a Member from attending a reception with his spouse and dependents, but to allow the Member to attend such a reception alone. Therefore, the Select Committee finds that simultaneous gifts valued at $35* or less should not be aggregated, but rather should be considered as separate gifts.

SUMMARY OPINION

Gifts to a spouse or dependent are considered indirect gifts to the Member, officer, or employee for purposes of House Rule XLIII, clause 4, unless such gifts are prompted by some consideration unrelated to the Member, officer, or employee. Simultaneous gifts such as dinner or reception invitations to a Member and his spouse and dependents should be treated as separated gifts and not be aggregated. Therefore, unless an individual gift is valued at more than $35*, it would be exempted for purposes of Rule XLIII, clause 4.

Select Committee on Ethics Advisory Opinion No. 3

SUBJECT

Applicability of House Rule XLIII, clause 4 to acceptance of free transportation provided by air carriers on inaugural flights.

REASON FOR ISSUANCE

The Select Committee has been requested to issue an advisory opinion on the propriety of Members, officers, or employees of the House of Representatives accepting free transportation provided by air carriers on inaugural flights.

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* This threshold for aggregation was increased from $35 to $50 by H. Res. 5, 100th Cong., 1st Sess.; see, *Congressional Record*, Jan. 6, 1987, at H6-16 (daily ed.).

BACKGROUND

Commercial air carriers are authorized, under federal regulations (18 CFR 223.8 and 399.38) and with the approval of the Civil Aeronautics Board, to provide free transportation on "inaugural flights" to invited guests when a new route or new equipment is introduced. Traditionally, the air carriers invite Members and employees of the House of Representatives, as well as officials of the Executive Branch, on such inaugural flights.

The applicable House Rule in this situation is Rule XLIII, clause 4 which provides, in effect, that a Member, officer, or employee of the House of Representatives shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress, or from a foreign national.

The air carriers are subject to federal regulation, and thus are deemed to have a direct interest in legislation before the Congress. The question to be determined is whether an inaugural flight constitutes a gift.

In the case of inaugural flights, the Member, officer, or employee of the House does not appear to render any services of equal consideration of the value of the flight, and therefore an inaugural flight would appear to constitute a gift to the Member, officer, or employee. If the value of the transportation provided on an inaugural flight exceeds $100, and the Committee assumes that such would be the case in every instance, acceptance of such a gift would be prohibited under Rule XLIII, clause 4.

The Committee recognizes that the definition of the term "gift" for purposes of Rule XLIII, clause 4, might not include some situation where a trip or event is primarily intended for educational purposes and is directly related to a Member's or officer's or employee's official duties. However, the Committee finds that inaugural flights, as traditionally defined, do not have sufficient educational value to exclude them from the definition of a gift for purposes of the intent of Rule XLIII, clause 4.

SUMMARY OPINION

Acceptance of free transportation provided by air carriers on inaugural flights is prohibited under House Rule XLIII, clause 4.

Valuation of Gifts of Transportation on Private Aircraft

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT LETTER OF JUNE 11, 1987

Dear Colleague: The purpose of this letter is to notify all Members, officers, and employees of the House of Representatives of a revision to the Committee's policy, effectively immediately, regarding the valuation of gifts of transportation not accepted in connection with either fact-finding activities or events in which a Member substantially participates. Members may not accept gifts valued at greater than $100 from persons or organizations deemed to have a direct interest in legislation. See, House Rule XLIII, clause 4, which states:

> A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $50 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

To date, the Committee has utilized a simplified approach in valuing gifts of transportation (most typically provided on private aircraft) accepted by Members. The existing methodology has been to determine whether the specific itinerary is also available from a commercial carrier and, if so, to set the value of the flight using the lowest available commercial rate. This concept of valuation is consistent with the approach taken by the Select Committee on Ethics in its *Final Report,* House Report 95-1837, January 3, 1979:

> With respect to gifts of transportation on private aircraft, the value is equal to the commercial air fare for the same flight." *Final Report,* at p. 8. See also, H. Rept. 99-470, February 5, 1986; and H. Rept. 100-46, April 9, 1987.

While the existing approach has, of course, generally proven adequate to value gifts of transportation, the Committee believes that the approach can, and should, be further refined to take into account the various factual scenarios which might arise. Such refinements would address the kind of service provided (that is, class of transportation), as well as valuation in the absence of regularly scheduled commercial service.

To this end, the Committee, effective immediately, will adopt criteria similar to that utilized by the United States Senate and described by the Senate Select Committee on Ethics in its Interpretative Ruling No. 412, issued August 11, 1986.

Accordingly, the Committee has agreed on the following method for calculating the value of a gift of private aircraft transportation for both reimbursement and disclosure under the Ethics in Government Act of 1978, as well as application of House Rule XLIII, clause 4.

REVISED VALUATION APPROACH

> A. If the cities between which the Member is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of the aircraft is the cost of a first class ticket from the point of departure to the destination. If more than one first class fare is available (due to service by more than one carrier), the lowest first class fare will be used.

B. If the cities have regularly scheduled air service, but only a standard (coach) rate, then the value of the use of the aircraft is the coach rate. If more than one coach fare is available due to service by more than one carrier, the lowest coach fare will be used. No discount fares will be used, such as "supersaver" fares, for valuation purposes.

C. If either the city from which the Member flies or his destination does not have regularly scheduled air service, then the value of the use of the aircraft is the cost of chartering the same or a similar aircraft for that flight.

The Committee notes that the new policy is generally consistent with Federal Election Commission regulations pertaining to the use of private aircraft by candidates for Federal office.

The Committee further notes that the Committee on House Administration has adopted travel regulations pertaining to the level of reimbursement to be provided from the official allowance to Members who seek reimbursement for air transportation costs they have paid in connection with official travel. By contrast, this advisory letter and the revised policy address only the valuation of gifts of private transportation not associated with official travel.

Any questions regarding the revised policy shall be directed to the Committee staff at 225-7103.

Sincerely,

JULIAN C. DIXON,
Chairman.
FLOYD D. SPENCE,
Ranking Minority Member.

Chapter 3. OUTSIDE EMPLOYMENT AND INCOME OF MEMBERS, EMPLOYEES, AND SPOUSES

Highlights

Rules concerning the outside employment and compensation of Members, officers, and employees of the House are generally concerned with potential conflicts of interest: private commitments that might infringe on public obligations, potential influences on official conduct; possible distraction from the time and attention expected to be devoted to official congressional responsibilities; and the possible appearance that an individual is cashing in on a position in the Congress.

Members of the House are limited in the amount of outside earned income, including honoraria, that they may make in a year to 30 percent of their aggregate congressional salary.

With respect to outside employment and compensation, Members and employees of the House may *not*

—accept an honorarium of more then $2,000 for one speech, appearance, or article;

—directly or indirectly receive compensation for services rendered before Federal agencies for other persons or organizations, represent others in a private capacity before the Government, or, in most instances, contract with the Federal Government;

—receive compensation of any kind from a foreign government or act as an agent for a foreign principal;

—engage in certain self-dealings with private foundations without incurring substantial tax penalties; or

—use one's official position in Congress as a means for making personal gains.

Restrictions may be placed on the outside employment of personal and committee staff when a conflict with official responsibilities might occur or the employment could detract from an employee's ability to effectively perform the duties for which paid by the House of Representatives.

House rules, ethical standards, and statutory provisions greatly restrict the private practice of law by Members and employees, particularly the continued affiliation with a firm, although the practice of law is not absolutely prohibited.

The mere potential of a conflict of interest does not preclude a Member's spouse from accepting outside employment. However, a Member should avoid circumstances suggesting that direct or indirect benefits may have been received because of an improper influence from the Member's position or that private compensation to a spouse influenced official acts.

Members and certain employees of the House are required to file annual financial disclosure statements detailing their outside earned income, as well as other information concerning both the filer and the filer's spouse.

Chapter 3. OUTSIDE EMPLOYMENT AND INCOME OF MEMBERS, EMPLOYEES, AND SPOUSES

Members and employees of the House of Representatives are under numerous restrictions concerning outside employment and the receipt of outside earned income. Problems may arise because of possible conflict between the narrow interests of a private employer and the broader interests of the general public. The judgment of a Member or employee in performing official duties may be influenced because of employment with and compensation from a private source. Outside employment may distract an individual from giving full time and attention to congressional duties. The public might view such employment as an impropriety—as an official cashing in on a position of influence.

A general ethical principle in the House of Representatives is that a Member or employee should *not* use the prestige and influence of a position in Congress for personal gain. In recognition of this principle and to deal with the problems that may arise in relation to conflicts of interest and "time," the House has adopted various standards of conduct in addition to statutory restraints on outside employment and income. Most significantly with respect to Members, House rules limit the total amount of outside earned income that may be received in a calendar year to not more than 30 percent of aggregate congressional salary.[1]

In addition to the limit on a Member's overall earned income and rules barring the use of one's official position for personal gain, other restrictions apply to particular areas of outside employment and compensation. For example, Members and employees of the House are prohibited from receiving compensation for services rendered before Federal agencies on behalf of another person or organization, may not represent others in a private capacity before the Government, and may not contract with the Federal Government. They are also restricted in their self-dealings with private foundations, are prohibited from receiving any compensation from a foreign government or acting as an agent for a foreign principal, are limited in the amount of honoraria they may accept, and may be restricted in some areas of the practice of law. Members of the House and certain senior employees are also required to file annual disclosure statements reporting income and compensation received, along with other items of financial information (see Ch. 7).

Outside Employment and Official Activities. Although the term "conflict of interest" may be subject to various interpretations in general usage, as noted in a study on congressional ethics, this term, under Federal law and regulation, "is limited in meaning; it denotes a situation in which an official's conduct of his office conflicts with his private economic affairs."[2] The ultimate concern behind the conflict of interest principle was discussed by the New York City Bar Association's Special Committee on Congressional Ethics, which stated: "The risk, then, is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests."[3]

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[1] Rules of the House of Representatives, Rule XLVII, as amended by H. Res. 305, 97th Cong.

No statutory provision or House rule specifically prohibits engaging in outside private employment, even if such employment conflicts with or is inconsistent with official duties. Such conflict or inconsistency might occur, for example, when the interest of a private employer or client is at odds with the interests of the general public or when specific matters involved in private employment would be before an individual in an official congressional capacity. By comparison, Senate Standing Rule XXXVII, clause 2, specifically prohibits outside employment by Members, officers, and employees that conflicts with conscientious performance of official duties.

Despite the absence of a specific House rule, ethical standards and rules effectively restrict outside activities inconsistent with congressional responsibilities. The "Code of Ethics for Government Service,"[4] in addition to stating generally that a "public office is a public trust,"[5] specifically provides that a Member or employee should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."[6] This provision looks to the appearance of undue influence or breach of the public trust.

A possible violation of this provision might occur, for example, if a Member seeks benefits from an organization or firm when the Member, in his official congressional capacity, had actively promoted the establishment of that organization.[7] Additionally, if the Member sponsors legislation that specifically deals with and affects an organization or interest from which the Member is receiving compensation or other benefits, a violation of ethical principles may exist that work to "prohibit conflicts of interest and the use of official position for any personal benefit."[8]

Members and employees of the House are further prohibited by the Code of Official Conduct, House Rule XLIII, clause 3, from receiving any compensation or allowing any compensation to accrue to one's beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from a position in the Congress. Application of this provision would again necessitate a close examination into the circumstances surrounding the receipt of outside compensation and the relationship of that receipt to official acts or exertion of influence. As noted in the debate preceding the adoption of the rule, it must be determined if an individual had "used his political influence, the influence of his position * * * to make pecuniary gains."[9] Along similar lines, Members and employees of the House are prohibited from using confidential information received in the performance of their official duties as a means for making private profit.[10]

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[2] Getz, Robert S., *Congressional Ethics*, Nostrand, 1967, p. 3; see also, Manning, Bayless, *Federal Conflict of Interest Laws*, Harvard University Press, 1964, pp. 2–5; *Black's Law Dictionary*, Fifth Ed., West Publishing Co., 1979, p. 271.

[3] *Congress and the Public Trust*, James C. Kirby, Jr., Executive Director, New York, 1970, p. 39.

[4] 72 Stat., part 2, B12 (1958), H. Con. Res. 175, 85th Cong.; see, House Report No. 94-1364 as to its continuing applicability.

[5] *Id.*, at para. 10.

[6] *Id.*, at para. 5.

[7] See, House Report No. 94-1364, 94th Cong., 2d Sess., *In the Matter of a Complaint Against Representative Robert L. F. Sikes*, Committee on Standards of Official Conduct, pp. 3–4.

[8] *Id.*, at p. 4.

Employees who engage in private employment may not do so to the neglect of official congressional duties or on "official time" for which salary is received from public funds. The House rules specifically require that a Member not retain anyone on his clerk-hire allowance "who does not perform duties commensurate with the compensation he receives."[11] All persons in Government service are required by the Code of Ethics for Government Service to "[g]ive a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought."[12] These provisions recognize that a House employee is hired for and paid from the United States Treasury for the performance of official duties.[13] Outside employment that detracts from the performance of, from the time and attention to, one's Government job would thus be contrary to these standards.

Members' Outside Earned Income Limitation. House Rule XLVII [14] places restrictions upon the outside earned income of Members of the House. The provision currently limits the amount of outside earned income (including honoraria) that a Member may receive in a calendar year to 30 percent of the Member's aggregate yearly congressional salary. This *House rule is more restrictive than Federal law* at 2 U.S.C. § 31-1(b)(1), which imposes a limit of 40 percent of congressional salary on the aggregate amount of honoraria that may be accepted in a calendar year (as amended by section 137 of Public Law 99-190).

The House Commission on Administrative Review of the 95th Congress, in recommending the limitation, noted basic reasons for focusing on and restricting income from outside employment activities, rather than from assets or investments:

> Earned income creates a variety of more serious potential conflicts of interest than does investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of members on particular issues * * *. The Member who has stock holdings can transfer his holdings at any time to another company, and thus is not subject to the same degree of potential conflict as a Member whose * * * salary [from a private company] could be cut off arbitrarily.

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[9] 114 *Congressional Record* 8807, Apr. 3, 1968, comments by Representative Price.

[10] Code of Ethics for Government Service, *supra*, at para, 8; see also, 7 U.S.C. §13(e) as to use of inside information from the Commodity Futures Trading Commission; and 50 App. U.S.C. § 2160(f) as to the use of any confidential information received by virtue of public position in speculating in any commodity exchange.

[11] House Rule XLIII, cl. 8.

[12] Code of Ethics for Government Service, *supra*, at para 3.

[13] See, Committee on House Administration Regulations, at pp. 2.1 and 3.1, of the *Congressional Handbook of the U.S. House of Representatives*, Sept., 1985.

[14] Adopted on Mar. 2, 1977 (H. Res. 287, 95th Cong., 1st Sess.) and amended on Dec. 15, 1981 (H. Res. 305, 97th Cong., 1st Sess.).

> Outside earned income also presents a "time conflict" between the Member's private interest and the public interest. Supplementing salary with outside earned income can detract from a Member's full time and attention to his official duties and creates subtle distortions in judgment as how Members should use their time * * *.
>
> Moreover, many citizens perceive outside earned income as providing Members with an opportunity to "cash in" on their positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.[15]

Rule XLVII restricts income earned for personal services, rather than moneys received from ownerships or other investments of equity.[16] In an advisory opinion, the Select Committee on Ethics of the 95th Congress emphasized that the facts of a particular case would control as to whether moneys received were earned income:

> [T]he label or characterization placed on a transaction, arrangement, or payment by the parties may be disregarded for purposes of the Rule. Thus, if the amounts received or to be received by a Member are in fact attributable to any significant extent to services rendered by the Member, the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule XLVII to such amounts.[17]

Personal service businesses. In businesses where capital is *not* a material income-producing factor, such as in the practice of one's profession as a doctor, lawyer, insurance broker, or real estate agent, the Select Committee noted that the entire share of profits will *generally* be considered earned income, *unless* it can be shown that some income actually derives from a return on investment. Even where the Member performs no personal services, it will be presumed, lacking a strong showing to the contrary, that the Member's share of profits from a service business is for attracting or retaining clients and thus is to be considered as earned income.[18] As to law practices specifically, the Select Committee noted that "buy-out" arrangements are permitted and will not be counted toward the earned income limit when fair and reasonable in relation to comparable practices. If a Member does retain an interest in a law firm, the Member "may treat as unearned income a portion of his share of the profits from the law firm, as from any other personal service business, equal to interest computed at 10 percent per annum on his investment in the business assets." [19]

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[15] House Document No. 95-73, 95th Cong., 1st Sess., "Financial Ethics," Communication from the Chairman, Commission on Administrative Review, U.S. House of Representatives, p. 10.

[16] See, comments by Mr. Frenzel, 123 *Congressional Record* 5901-5902, Mar 2, 1977.

[17] House Select Committee on Ethics, 95th Cong., Advisory Opinion No. 13 in House Report No. 95-1837, Final Report of the Select Committee, pp. 81-87. The text of the Advisory Opinion appears in full at the conclusion of this chapter.

[18] *Id.*

[19] *Id.*

Business corporations. In business corporations, only consideration to the Member for services performed will be considered earned income. An increase in the value of the firm's stock or distribution of profits will *not* be considered earned income. This, however, cannot be used as a subterfuge, such as where a Member would incorporate for the purpose of making speeches or writing articles, then have all fees directed to the corporation and later distributed to the Member as "profits."

Close corporations, partnerships, and unincorporated businesses. Where a Member has an ownership interest and also performs some services as in a close corporation, partnership, or unincorporated business, some of the profit realized might result from the personal services of the Member and therefore would be considered earned income. "[T]he determining factor is whether the Member's personal services generate significant income for the business." [20] The Member may protect his or her interest and investments in the business through general oversight and management of investments without generating earned income. However, fees, compensation, or salaries from such a business are earned income. Where the Member's principal function is to refer clients or help retain clients, then "the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal." [21]

The rules on income-producing services for a business in which the Member has an ownership interest would also apply to a family business or farm. As provided in Rule XLVII, the term "outside earned income" means "wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered" but, however, does not include (1) the Member's congressional salary; (2) compensation from services rendered prior to becoming a Member or before the effective date of the rule; (3) amounts received from a qualified pension, profit-sharing, or stock bonus plan; and (4) in the case of a family-controlled business or farm, amounts received in connection with protecting or managing one's investment as long as the personal services rendered by a Member do not in themselves generate a significant amount of income.

The Commission on Administrative Review in the 95th Congress offered an explanation concerning the family business or farm exemption from the personal earned-income limitation:

> * * * [T]he Commission believes that Members should be able to render personal services to manage or protect their equity in a family trade or business without having to allocate these personal services toward the 15- [now 30] percent limitation. However, if the personal services, in and of themselves, generate any significant amount of income, the resulting income should be subject to the * * * limitation. Conversely, the Commission believes that in implementing this limitation care should be taken to prevent

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[20] *Id.*

[21] *Id.*

> Members from circumventing it by incorporating themselves into a "faimily business" and then withdrawing what in reality are fees for personal services in the form of dividends or profits.[22]

The debate preceding the adoption of this rule emphasized that personal services that generate income do not come within the exemption and would thus be subject to the earned-income limitation:

> The crucial element in determining whether the limitation applies . . . is this: If the personal services produce the income, then it does not matter whether it is a family business or whether it is a law firm, or anything else. If those personal services actually produce the income, then it comes under the limitation.[23]

Additionally, the Select Committee stated the following with respect to the "family business" exemption:

> The definition of earned income in Rule XLVII, which excludes amounts received by a Member from a family controlled business "so long as the personal services actually rendered by the Members . . . do not generate a significant amount of income," was simply intended to assure Members that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member would not be required to allocate his share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment.[24]

Income generally comes within the limitation for that year and that time when the Member earns it—that is, "when the Member's right to receive it becomes certain."[25] A Member may therefore *not* earn income and have it deferred to another year or to when he leaves Congress to avoid the income limitation. As for honoraria, however, House Rule XLVII, clause 2, provides that honoraria shall, for the purposes of the earned income limitation, be counted toward the yearly limit for the year in which the honorarium was *received*, rather than earned. A similar treatment of honoraria is provided by statute at 2 U.S.C. §§ 31-1(b)(3) and 441i(d). In the case of a speech given late in a year, potential problems could arise where payment is not received until the next year. Thus, Members have the *limited* option of using a cash basis for receipt of honoraria for the purposes of the rule. As is discussed in more detail below, honoraria earned but assigned or paid to a qualified tax-exempt charity do *not* count toward the earned income limit.

Honorarium Restrictions. Members and employees of the House of Representatives are generally permitted to accept honoraria for their personal appearances, articles, speeches, and similar services.

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[22] H. Doc. No. 95-73, *supra*, at p. 11.

[23] 123 *Congressional Record* 5897, Mar. 2, 1977, comments by Representatives Hamilton; see also, 123 *Congressional Record*, comments by Representatives Obey.

[24] Advisory Opinion No. 13, *supra*.

[25] *Id.*

Provisions of the House rules and Federal statutes, however, restrict the amount of an honorarium that may be accepted for a single event, and, for Members, the aggregate that may be accepted in one calendar year. Members and supervising officials may establish policies governing the acceptance of honoraria by employees under their authority.

The definitions of the term "honorarium" within House Rule XLVII, 2 U.S.C. § 31-1, and regulations issued by the Federal Election Commission (FEC), the agency authorized to promulgate regulations to implement 2 U.S.C. § 441i[26] are similar. The more comprehensive FEC regulations define the term to mean the payment of money or anything of value "as consideration for an appearance, speech, or article."[27] The terms "appearance," "speech," and "article" are further defined.[28]

The FEC regulations additionally provide a description of what an "honorarium" is *not*. Excluded from the definition is "an award" given primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civil achievement. The award must be based upon a selection process with established criteria, for which the recipient is not required to apply or take any specific action by way of competition and which is not conditioned on the recipient making a speech or appearance or writing an article.[29] Further, an honorarium does not include "a gift," which is described as a "voluntary conveyance of real or personal property which is made gratuitously, is not supported by consideration, and is not made to serve in place of an honorarium."[30] Also excluded and distinguished from an honorarium is a "a stipend," defined as "payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events."[31] In an advisory opinion, the FEC further stated that a stipend would be money "accepted in the form of fixed or regular compensation intended as consideration for the rendering of services, e.g., a salary."[32]

Federal law controls the amount of an honorarium a Member or employee may receive for any speech, appearance, or article. This "per event" limitation is $2,000, *excluding* related transportation, food, and lodging expenses for the Member and an aide *or* spouse, as well as any amounts incurred for agents' fees or commission.[33] In addition to the specific dollar limit on honoraria, House Rule XLIII, the Code of Official Conduct, at clause 5, prohibits Members, officers, and employees of the House from receiving honoraria "in excess of the usual and customary value" for the services involved.

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[26] See, 2 U.S.C. §§ 437d, 438.

[27] 11 C.F.R. § 110.12(b).

[28] *Id.*

[29] *Id.*

[30] *Id.* But, see restrictions on gifts included in Rule XLIII, clause 4, discussed in Chapter 2 of this manual.

[31] *Id.* A stipend would, however, be outside earned income subject to the limitation of Rule XLVIII.

[32] FEC Advisory Opinion 1975-46, 40 F.R. 57756, Dec. 11, 1975 (note modification by 1976 amendments to the F.E.C.A., 41 F.R. 46416, Oct. 20, 1976). See also, Advisory Opinion 1975-77, 40 F.R. 51611, Nov. 5, 1976, treating royalties similarly, citing the *Congressional Record*, S18526 and H10334 (daily ed.), Oct. 8 and 10, 1974, respectively.

[33] 2 U.S.C. § 441i. A per-event limitation of $1,000 was eliminated from House Rule XLVII in 1981 by H. Res. 305, 97th Congress, allowing the statute to control.

The law additionally provides that when an honorarium that is earned by a public official is paid instead to a qualified charitable organization, it will *not* count towards the per-event limitation. This is *also* the case for a Member's yearly aggregate limit on honoraria and other outside earned income.[34] The Internal Revenue Service has ruled in Revenue Ruling 79-121 that when an honorarium is earned and then transferred to a charity, the honorarium is to be treated as "income" of the public official with an offsetting deduction taken for the charitable contribution.

Moneys received as honoraria would also be subject to other general restrictions applicable to outside income and compensation. Included are ethical restrictions on the use of official position for personal gain, the limitation on aggregate yearly earned income, the restrictions on contracting or enjoying benefits under a contract with the Federal Government, restrictions on self dealing with private foundations, and prohibitions on the receipt of compensation from foreign governments. Members and employees should therefore be concerned with the identity of a sponsoring person or organization and the source of funds when accepting honoraria for speeches, articles, or appearances.

It should also be noted that the 1976 Amendments to the Federal Election Campaign Act (P.L. 94-293) specifically exempted money received as "honorariums" under 2 U.S.C. § 441i from the definition of political "contributions." [35] Thus, honoraria are not subject to the various statutory and House rule restrictions concerning political contributions.

Services for Others Before Federal Agencies.—Officers and employees of the legislative branch are specifically prohibited by Federal law at 18 U.S.C. § 203 from seeking or receiving compensation, directly or indirectly, for any "services rendered" in relation to any matter or proceeding in which the United States is a party or has an interest, before any government agency, department, or bureau. Thus, a Member, officer, or employee of the House may not receive compensation or things of value, other than congressional salary, for interceding, representing, or other dealings with an adminstrative agency on behalf of a constitutent or on behalf of any other person or organization. The terms of this statutory prohibition, although applicable to matters before "any department or agency, courtmartial, officer, or any other civil, military, or naval commission," do not apply and were not intended to apply to matters or proceedings before a court of law,[36] though other provisions, discussed below, may otherwise restrict court involvement.

In interpreting this provision, the Federal courts have determined that even if contacting a Federal agency on behalf of a private individual or organization is within the scope of official duties, the gist of the offense is accepting additional compensation for such services.[37] However, mere inquiries concerning the status of a pending matter before a Federal bureau, without discussion of the merits of a case, have been held not to constitute prohibited "services rendered" within the statutory framework.[38] A violation of 18 U.S.C. § 203 may result in the Member or employee being liable for repayment of compensation unlawfully received under a theory of breach of fiduciary duty and trust. As held by a Federal court in finding a former Member of Congress liable for such repayment, a violation of section 203—

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[34] 2 U.S.C. § 441i(b) as amended by P.L. 98-63, section 908(g), 97 Stat. 338; see also, section 908(c), House Rule XLVII, and "Dear Colleague" letter of Mar. 28, 1983, from the House Committee on Standards of Official Conduct.

[35] 2 U.S.C. § 431(8)(B)(xiv); see also, 11 C.F.R. § 100.7(b)(19).

[36] Compare 18 U.S.C. § 203 with 18 U.S.C. § 205; see, legislative history of the provision, House Report No. 748, 87th Cong., 1st Sess. (to accompany H.R. 8140), p. 20; also Memorandum of Attorney General Regarding Conflict of Interest Provisions of Public Law 87-849, Feb. 1, 1963, 28 F.R. 985 (see 18 U.S.C. § 201, note).

> * * * unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a member of Congress must shed the duty of distinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge.[39]

The prohibition of section 203 extends to the receipt of compensation "directly or indirectly" for services before Federal agencies. Therefore, if a Member or employee is in a partnership arrangement or otherwise shares in fees from services rendered before Federal agencies, a violation of this provision may occur even if the individual did not personally perform services before the agencies.[40] Although most relevant to those who practice law, and therefore discussed in further detail below, the Department of Justice has stated in an informal letter opinion that section 203 "bars a partner in a law firm from sharing in any fees received by the firm before any Federal department or agency during the time he is or was a Federal employee." [41] Although such fee sharing or partnership arrangements concerning Federal agency practice would be prohibited, section 203 as interpreted by the Justice Department would apparently allow receipt of a fixed salary from a firm or organization that derives some revenue from Federal agency practice. The cited letter notes that "this Office has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203."

Even if no compensation is involved, Members and employees are generally prohibited by 18 U.S.C. § 205 from acting as agent or attorney for anyone "in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation arrest, or other particular matter in which the United States is a party or has a direct and substantial interest." Although the proscribed conduct under section 205 might require more than more "services rendered" as in section 203, it does not appear that an individual must actually be an attorney or have a strict common law agency relationship with another for such person's conduct to fall within the statute.[42]

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[37] *May* v. *United States*, 175 F.2d 994 (1949), *cert. den*. 338 U.S. 830 (1949).

[38] *United States* v. *Quinn*, 141 F.Supp. 622 (D.N.Y., 1956).

[39] *United States* v. *Podell*, 436 F.Supp. 1039 (1977), *aff'd* 572 F.2d 31 (2d Cir., 1978). See also, *United States* v. *Eilberg*, 507 F.Supp. 267 (E.D. Pa., 1980).

[40] See, House Committee on Standards of Official Conduct Advisory Opinion No. 1, Jan. 26, 1970, included at the conclusion of Chapter 9.

[41] Letter of Mar. 14, 1978, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice.

Members and House employees should thus avoid private representation of persons before the Government except for those activities that are specifically exempt from the statute, such as uncompensated work in disciplinary or personnel proceedings or the representation of certain family members or persons to whom the individual acts as a personal fiduciary in certain matters not connected with the person's governmental duties. Individuals may represent themselves before the Government without violating the provisions of 18 U.S.C. § 205.[43]

Federal law at 5 U.S.C. § 501 also provides that a firm, business, or organization that practices before the Federal Government may not use the name of a Member of Congress to advertise the business. As for dealings in general with the Government, ethical standards adopted in the Code of Ethics for Government Service state that all officers of the Government, including Members and House employees, may not engage in any business with the Government, either directly or indirectly, "which is inconsistent with the conscientious performance" of governmental duties. Finally, as discussed below, limitations exist on contracting with, or receiving benefits arising from, a Government contract.

Contracting With the Federal Government. A Federal criminal prohibition, at 18 U.S.C. § 431, provides a penalty for any Member of Congress who "undertakes, executes, holds or enjoys" a contract or agreement entered into with the United States. Further, 41 U.S.C. § 22 requires that all Government contracts contain a clause providing that no Member of Congress may share in the benefits arising from such contract. In addition, 18 U.S.C. § 432 penalizes any officer or employee of the United States who "makes or enters into any contract, bargain or agreement" with a Member of Congress on behalf of the United States.

The statute provides that a Member may not "directly or indirectly" hold, execute, undertake, or enjoy "in whole or in part" any contract with the Government. Thus, an opinion of the Attorney General found that a partnership that includes a Member of Congress as a member is prohibited from entering into a contract with the Federal Government.[44] There are no definitive Federal rulings as to whether a Member of Congress may receive compensation as an employee rather than a partner of a firm or organization holding a Government contract, although some state decisions in this area prohibit legislators from such a connection to and benefit from a government contract.[45] Further, although section 431 is a criminal statute and thus must be interpreted narrowly, a Member of Congress receiving compensation or fees from an organization's Government contract, either as salary, honorarium, or subcontract, might be considered as benefiting from the Federal contract in violation of the standards expressed in 41 U.S.C. § 22, even if arguably not committing an indictable criminal offense under 18 U.S.C. § 431.

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[42] *United States* v. *Sweig*, 316 F.Supp. 1148 (D.C.N.Y., 1970).

[43] See, 14 Op. Atty. Gen. 483 (1874); memorandum of Attorney General, Jan. 28, 1963, 18 U.S.C. § 201 note, re: 18 U.S.C. §§ 203 and 205.

[44] 4 Op. Atty. Gen. 47 (1842).

[45] See, 47 Virginia Law Review 1034, 1050-1051 (1961).

One relationship of a Member of Congress to a Government contract that has been specifically exempted from the statutory prohibition is any contract made, entered into, or accepted by an incorporated company for the general benefit of the corporation. Thus, under 18 U.S.C. § 433, a Member of Congress may apparently be a stockholder, even a principal stockholder, or an officer of a corporation that holds a Government contract without incurring criminal liability. It would appear that the exception for contracts with corporations contained in 18 U.S.C. § 433 would likewise apply to the contract law provision of 41 U.S.C. § 22, since all the provisions discussed, and the exceptions to them, were originally passed as part of the same act.[46]

Several opinions of the Attorney General have been issued interpreting these provisions. One, concerning a "substantial" stock interest of a United States Senator in an incorporated cattle company that secured Federal agency loans to cattle finance companies, noted:

> The provision of section 116 [now 18 U.S.C. § 433], specifically excepting from the operations of sections 114 and 115 [18 U.S.C. §§ 431 and 432] contracts made, entered into, or accepted by any incorporated company, where such contract or agreement is made for the benefit of such incorporation or company, has been an integral part of this legislation since its original enactment * * * and is entirely clear in its provisions.[47]

A later opinion dealt with a Government contract to a firm in which the Member of Congres not only held 30 percent of the outstanding stock but of which the Member was also president, "and presumably, therefore, the active head." [48] The Attorney General found that the exemption applies in such a case since the Congress had not qualified the exemption on corporate contracts and had made "no distinction between corporations in which Members of the Congress hold a substantial interest in the capital stock and those in which they do not hold such interest." [49]

The Attorney General further noted that although "[i]t may be that at the time of [the statute's] enactment the Congress did not contemplate the present widespread use of the corporate form and therefore did not have in mind situations such as the one now presented," nevertheless the Congress had reenacted and amended those provisions a number of times, extending and enlarging the exemptions contained in them, and therefore apparently "acquiesced" in the "construction placed thereon by the Attorneys General and the Courts * * *." [50] It was recognized, however, that the possibility for abuse exists within this exemption. Further, the question of whether the act of incorporation for the obvious purpose of circumventing the statute's prohibition would give rise to a cause of action under these provisions, and justify a "piercing of the corporate veil," was left open.[51]

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[46] Revised Statutes §§ 3739–3741, Apr. 21, 1808, 2 Stat. 484, C. 48.

[47] 33 Op. Atty. Gen. 44, 48, Oct. 29, 1921.

[48] 39 Op. Atty. Gen. 165, 167, May 19, 1938.

[49] *Id.*, at 167–168.

[50] *Id.*, at 170.

In addition to exempting corporation contracts from the prohibition against a Member contracting with the Government, 18 U.S.C. § 433 also specifically provides that the prohibition will not apply to contracts, loans, or other agreements made or entered under:

> The Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

The requirement of excluding Members of Congress from benefits arising from a Federal contract stated at 41 U.S.C. § 22 is specifically applicable to the acquisition of land by the Government under flood control policies and procedures [52] but is not applicable to contracts entered into under the United States Information and Educational Exchange Program.[53]

In addition, Federal Procurement Regulations state that contracts between the Government and Federal employees (including employees of the House of Representatives), or business concerns owned or controlled by Federal employees, should not knowingly be entered into unless a senior contracting agency official certifies that there is a "most compelling reason" to do so, such as where the Government's needs cannot otherwise be reasonably fulfilled.[54] The general ethical standards in the Code of Ethics for Government Service also state that an employee "[s]hould engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties." [55] After such a contract, grant, or employment has been negotiated by an employee for himself, the conflict of interest and ethical restrictions on "time" and "subject matter" conflicts, as well as restrictions on dual Government pay and employment, discussed below, would come into effect if the individual remains an employee of the House.

Dual Government Employment. Provisions of the United States Code prohibit individuals paid by the Clerk of the House from holding another Government position if the salary of the two positions combined exceeds $17,586 per year.[56] Also prohibited is the receipt of pay from two positions, both paid by the Clerk of the House, if the aggregate salary from the two House positions exceeds the maximum per annum rate of pay authorized to be paid out of the Member's clerk hire allowance.[57] The dual pay provisions allow receipt of more than the limit for multiple employment when the positions involved are expert or advisor positions and pay is received on a "when-actually-employed" basis for different days.[58]

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[51] *Id.*, at 170-171.

[52] 33 U.S.C. § 702m.

[53] 22 U.S.C. § 1472.

[54] 48 C.F.R. 3.601-Z.

[55] 72 Stat. part 2, B12, para. 7.

[56] 5 U.S.C. § 5533(c)(1); the cited amount is the $7,724 limit included in the statute, adjusted by the Clerk of the House through Jan. 1987, in accordance with authority contained in 2 U.S.C. § 60a-2.

[57] 5 U.S.C. § 5533(c)(2).

This limitation on receiving pay for more than one Government job applies specifically to more than one "position," defined to mean "a civilian office or position (including a temporary, part time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government * * *."[59] When one is hired or retained as an independent contractor for services by the Government, rather than appointed to a civilian office or position, then the restriction on dual employment would arguably not apply.[60] The relationship involved in such a situation would not be one of employer-employee but rather a contractural one based on an independent contract, and thus such employment would not involve a "civilian office or position" subject to the dual compensation provisions.[61] The elements of an employer-employee relationship have been noted by the Office of Personnel Management to include "first, performance of a Federal function, second, appointment or employment by a Federal officer, and third, supervision and direction by a Federal officer."[62] Of course, such a contractural relationship may be affected by other limitations on Members and employees contracting with the Government, as discussed above.

Professional Staff of Committees. Professional staff members of the standing committees of the House are instructed by House Rule XI, clause 6(a) not to "engage in any work other than committee business." Further, the rule provides that such professional staff members "shall not be assigned any duties other than those pertaining to committee business."[63] The rule originated with the Legislative Reorganization Act of 1946, 60 Stat. 812. Its legislative history does not reveal any specific congressional intent to apply the limitation in question to outside employment activity by professional staff. Rather, it appears that the provision was intended to ensure that professional staff members of committees would work exclusively on committee business during their congressional work hours, as opposed to performing "other congressional office duties."[64] As noted in the floor debate on the provision, this was to ensure a continuing full-time professional staff of experts for the standing committees.[65]

Professional staff members of committees are thus generally under similar regulations as employees on a Member's personal staff with respect to outside employment. It should be noted that the standing committees of the House are authorized to determine certain terms and conditions of employment of their professional staff,[66] other than those established or governed by specific statute or rule. Thus, more stringent or restrictive regulations concerning the outside employment of professional staff might be established as each committee deems necessary for its efficient operation. Regulations of each committee should be examined, therefore, for further guidance on standards of conduct for the committee's employees.

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[58] 5 U.S.C. § 5533(c)(4).

[59] 5 U.S.C. § 5531.

[60] See, *Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514 (1926), at 518, 519-521; *Federal Personnel Manual*, Office of Personnel Management, Ch. 304, subchapter 1, §§ 1-4.

[61] See, 26 Comp. Gen. 188 (1946); 26 Comp. Gen. 442 (1947); 27 Comp. Gen. 695 (1948); 42 Comp. Gen. 395 (1963); Comp. Gen. Decision B-174226, Jan. 12, 1972.

[62] *Federal Personnel Manual, supra.*

[63] House Rule XI, cl. 6(a)(3)(B).

[64] "Organization of Congress," Senate Report No. 1011, 79th Cong., 2d Sess., p. 18, Report of the Joint Committee on the Organization of Congress pursuant to H. Con. Res. 18, Mar. 4, 1946; see also, Senate Report No. 1015, 90th Cong., 2d Sess., pp. 4-5.

[65] 92 *Congressional Record* 6443, 79th Cong., 2d Sess., June 6, 1946.

Foreign Governments. Members and employees of the House are prohibited, as are other Federal officials, by the United States Constitution at Article I, Section 9, clause 8, from receiving an "emolument" of "any kind whatever" from a foreign government or a representative of a foreign state, without the consent of the Congress. An "emolument" is generally defined as "any profit, gain, or compensation received for services rendered." [67]

This provision was introduced during the debates of the Constitutional Convention in August of 1787 by Mr. Pinckney of South Carolina. As noted in *Elliot's Debates,* "Mr. Pinckney urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence," and introduced this provision that passed without objection.[68]

The general principle behind this constitutional prohibition was stated briefly by Justice Joseph Story in his *Commentaries on the Constitution of the United States*: "The other clause, as to the acceptance of any emoluments, title, or office, from foreign governments, is founded in a just jealousy of foreign influence of every sort." [69] As noted by the Comptroller General, "It seems clear from the wording of the constitutional provision that the drafters intended the prohibition to have the broadest possible scope and applicability." [70]

Congressional consent, generally in the form of a private or public bill, is required before an honorarium or other income or compensation 0may be accepted by a Member of Congress from a foreign government, or organization or person representing or acting as an instrumentality of a foreign state. The Comptroller General has ruled that transportation or expenses for travel *gratuitously* given by a foreign government would fall within regulations promulgated on the receipt of foreign gifts. However, if the same were offered by a foreign government *in return for or in connection with some service* that a Member or employee has provided or will be performing, such as a speech, article, or appearance, then such expenses may constitute "compensation" and thus be an "emolument." [71] Although Congress has consented by statute to the acceptance by Federal officers of certain "gifts" or "decorations" of minimal value, and other gifts under certain circumstances, no such general consent for the receipt of emoluments or other compensation from foreign governments has been granted under the provisions of the Foreign Gifts and Decorations Act or any other statute.[72]

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[66] See, House Rule XI, cl. 6.

[67] 49 Comp. Gen. 819, 820 (1970); see also, Comptroller General Opinion #B-180472, Mar. 4 and May 9, 1974.

[68] *Elliot's Debates,* Vol. V, p. 467.

[69] Story, *Commentaries on the Constitution of the United States,* Vol. III, pp. 215-16.

[70] 49 Comp. Gen. 820 (1970).

[71] Comp. Gen. Opinion B-180472, *supra,* n. 67.

Members and employees are therefore prohibited from receiving any payment for services rendered to official foreign interests, such as ambassadors, embassies, or agencies of a foreign government, or from multinational organizations made up of foreign governmental units.[73] Caution should thus be exercised in accepting expenses or other compensation from foreign foundations or other foreign organizations that receive support from a foreign government or have such a relationship to the foreign government through sponsorship, funding, or licensing to be considered an official arm or an instrumentality of that government. The Comptroller General has ruled, for example, that a Member of Congress could not accept a fee from the British Broadcasting Corporation for participation in a television program to discuss the American Presidency since the BBC, because of its funding relationship and regulation by the British Government, would be considered an instrumentality of the British Government, and thus a "foreign state" under the constitutional ban.[74]

In addition to the limitation on compensation from foreign governments, public officials, including those in the legislative branch, are prohibited by statute from acting as an agent or attorney for a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, that is, generally, those individuals engaged in lobbying, political, or propaganda activities.[75] In addition, statute and House rules regulate or restrict the receipt of campaign contributions or gifts from any foreign national.[76]

Private Foundations. Tax penalties may arise if Members or employees of the House engage in acts of "self-dealing" with a "private foundation." Provisions of the Internal Revenue Code at 26 U.S.C. § 4941 prohibit specified dealings, such as the payment of compensation or certain expenses, between a private foundation and some government officials, including elected officials in the legislative branch and House employees who receive a salary of at least $15,000 per year. The tax sanctions include an imposition of excise tax on both the self-dealer and the manager of the foundation, which increase in size if the original matter is not rectified within a certain time or for repeated or willful and flagrant violations.

Financial Disclosure Reports. As is discussed in detail in Chapter Seven, "Financial Interests and Disclosure," Members as well as certain House employees must disclose outside compensation and business transactions in an annual personal financial disclosure report filed with the Clerk of the House by May 15 of each year. The reports must detail financial information for the preceding calendar year concerning several specified areas: income; gifts and reimbursements; financial holdings; debts; transactions in property or securities; positions held in businesses or organizations; and arrangements or agreements for continuing compensation, benefits, or future employment.

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[72] 5 U.S.C. § 7342, as amended by P.L. 95-105; see, however, P.L. 95-105, § 509 (37 U.S.C. § 801, note) as to employment of retired military members and members of the reserve by foreign governments.

[73] Note E.O. 11446, Jan. 16, 1969, concerning decorations from multinational organizations; 5 U.S.C. § 7342(a)(2), as amended by P.L. 95-105, concerning gifts from multinational organizations.

[74] Opinion B-180472, *supra*.

[75] 18 U.S.C. § 219; see, Foreign Agents Registration Act, 22 U.S.C. § 611, *et seq*.

[76] 2 U.S.C. § 441e; House Rule XLII, cl. 4.

Practice of Law. The practice of law by Members of Congress (as well as employees under certain circumstances) may raise ethical and conflict of interest problems beyond those involved in other outside employment undertakings. Because of the loyalty and trust owed a client by an attorney,[77] the problem of "serving two masters" may be particularly relevant in a congressional law practice when the narrow private interests of a specific client are inconsistent with the broader public interests of the Member's constituency or the nation. It has been argued that Members of Congress who engage in the outside practice of law are susceptible to being influenced in the performance of their official duties in Congress to favor the interests of important and lucrative private clients. Voting records have been offered to arguably support this contention.[78]

When the interests of a private client are in fact inconsistent with the interests of the general public on a particular matter, the attorney/congressman may be in an ethical dilemma in choosing between the public interest for which he was elected to serve or the private interests which he is retained to represent. The American Bar Association's (ABA) code of Professional Responsibility states:

> The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free from compromising influences and loyalties. Neither his personal interests, the interests of other clients nor the desires of third persons should be permitted to dilute his loyalty to his client.[79]

Therefore, loyalty to the interest of a private client may influence the judgment of a Member of Congress (or employee) in performing official congressional duties.

However, a Member of Congress (or employee) has a duty to represent the interests of the general public, rather than personal, private, or special interests. As stated by the Congress, "Public office is a public trust," and thus a Member of Congress is expected to exercise his judgment of behalf of the beneficiaries of the trust, that is, the general public.[80] A Federal court has specifically noted that a particular criminal restriction on the practice of law by Members of Congress, barring compensated representation of a private client before the Government, is intended to protect against a "breach of trust," which occurs when a Member "shed[s] the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge."[81]

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[77] American Bar Association, "Code of Professional Responsibility (hereinafter referred to as ABA Code), Canon 5, Ethical Consideration 5-1.

[78] Drew Pearson and Jack Anderson, *The Case Against Congress*, 1968, pp. 117-125.

[79] See note 77, *supra*.

[80] Code of Ethics for Government Service, *supra*, para. 10, 5; See, House Report No. 95-1837, *supra*, at p. 3.

[81] *United States* v. *Podell, supra*, at p. 1042.

Faced with such ethical questions and potential conflicts of interest, many Members of Congress have voluntarily refrained from the practice of law.[82] More significantly, the permissible practice of law by present Members of Congress has been limited by the adoption of ethical rules and conduct standards in both Houses of Congress.

The Standing Rules of the Senate prohibit a Senator from affiliating with a firm or association for the practice of law, prohibit a Senator from allowing a firm to use his name, and permit a Senator to practice law as a sole practitioner only during nonofficial time.[83]

Members of the House are still permitted to practice law and to affiliate with law firms but are restricted in the amount of income that may be earned from their outside practice (and all other outside earned income) to a total of 30 percent of their aggregate congressional salary in any year. This earned income limitation and other statutory and ethical restraints limit the private practice of law by members of the House and limit a Member's continuing affiliation with a private law firm during the term of office.

Statutory restrictions on law practice by Members. Statutory provisions restrict certain representations or practice by Members of the House. Thus, Members are specifically prohibited from practicing in the United States Claims Court or the United States Court of Appeals for the Federal Circuit [84] or from being employed as an attorney by contractors or charterers holding contracts under the Merchant Marine Act.[85]

As noted previously, Members are prohibited by a Federal criminal statute [86] from receiving any compensation, directly or indirectly, for services before Federal agencies rendered by themselves or any other person. Thus, Members may not receive compensation, directly or through participation in a partnership, for legal practice before Federal regulatory bodies such as the National Labor Relations Board, the Internal Revenue Service, the Federal Trade Commission, the Federal Communications Commission, and other departments, agencies, and offices of the Federal Government. Even if no compensation is involved, Members are generally prohibited from acting, other than in the proper discharge of official duties, as an agent or attorney before any department, agency, court, or commission in connection with a matter in which the United States is a party or has a direct or substantial interest.[87] The provisions bear directly on the propriety and efficacy of a Member of the House retaining affiliation with and interest in a private law firm, especially one with a significant Federal practice.

Affiliation with a firm. As to retaining an interest in a private law firm, the ABA, in its Code of Professional Responsibility, has promulgated disciplinary rules on what have been called "facade" law practices. Such practices would occur in cases where a member of the firm actually does little or no practice in the firm but retains his name in the title, letterhead, and announcements of the firm for prestige and attracting clients. The ethics of receiving compensation merely for a law firm's use of a Member's name, rather than for actual services performed, have been questioned by congressional sources. In addition to possibly misrepresenting a Member's actual participation in activities of the firm, or misleading the public as to the firm's influence, such an arrangement may give the appearance that the Member is receiving compensation or benefits merely because of the influence and prestige of a position in the Congress, rather than for any services performed.[88]

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[82] *U.S. News and World Report*, vol. 83, p. 39, "Putting a Lid on Lawyers in Congress," Sept. 12, 1977; reportedly there were 38 Members in the House practicing law in 1976.

[83] United States Senate Standing Rule XXXVII, esp. clause 5,

[84] 18 U.S.C. § 204, as amended by P.L. 97-164, Apr. 2, 1982, 96 Stat. 45.

[85] 46 U.S.C. § 1223(e).

[86] 18 U.S.C. § 203.

[87] 18 U.S.C. § 205.

Even where no compensation is received for affiliation with a firm, the ABA has prohibited the facade of retaining a Member's name in the firm when the Member is not actively and regularly practicing:

> A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in the professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.[89]

Additionally, Ethical Consideration 2-12 of the ABA Code of Professional Responsibility states:

> A lawyer occupying a judicial, legislative, or public exective position who has the right to practice law concurrently may allow his name to remain on the name of the firm if he actively continues to practice law as a member thereof.

The continued affiliation of a Member with a law firm may raise a dilemma for the Member. Under ethical rules promulgated by the ABA, an attorney must regularly and actively practice law to prevent the prohibited "facade" practice. However, such time and attention to an outside law practice is likely to create a "time" conflict with the Member's official position and duties in the Congress, which is understood to be a full-time commitment, requiring "full-time attention * * * to official duties."[90]

In some instances, the ABA has noted that persons who are to serve in a government post temporarily may take a leave of absence yet maintain their name in the firm. This is the case if the person intends to hold office only temporarily and then return to the position in the firm. However, "proper precautions" must be taken "not to mislead the public as to his degree of participation in the firm's affairs."[91]

A Federal statutory provision bars an individual, firm, or corporation practicing before a Federal agency from using the name of a

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[88] "Ethical Standards in Government," Report of a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, Committee Print, 82d Cong., 1st Sess., p. 25.

[89] ABA Code, D.R. 2-102(B).

[90] H. Doc. No. 95-73, *supra*, at p. 20; see also, House Report No. 95-1837, *supra*, at p. 29.

[91] ABA Opinion No. 318 (1967).

Member of Congress in "advertising" the business.[92] It appears, however, that the inclusion of an individual's name in the name of a law firm and on the letterhead of the stationery would not be "advertising" in violation of the statute as the term is generally used in relation to attorneys.[93] The statutory provision is derived with little change from a 1916 provision that referred to advertising in the commercial sense and was specifically intended to prevent the practice of individuals or firms, particularly those practicing before the patent office, from soliciting complimentary statements from Members of Congress and then using such statements for the purpose of endorsing and advertising their business.[94] However, even though participation by a Member of Congress or retention of a Member's name in a legal partnership that practices before Federal agencies may not technically violate 5 U.S.C. § 501, such an arrangement may be inconsistent with Federal law at 18 U.S.C. § 203.

Federal practice by partners. The statutory provision at 18 U.S.C. § 203, which, as discussed above, prohibits a Member of Congress from receiving compensation for services rendered before a Federal agency, department, or commission, also prohibits a Member from directly or indirectly receiving compensation for services rendered by another before such bodies. Thus, if a Member has an arrangement with partners or a legal firm where compensation for activities by partners or the firm would accrue to the Member, such an arrangement, where compensation accrues on account of services before a Federal agency, may be in violation of Federal law. A former Member of Congress was indicted and pleaded guilty to receiving compensation while a Member from a client/hospital for services rendered before Federal agencies by law firms with which the Member was affiliated or connected in some way.[95]

As to the practice of law before Federal agencies by law firms with which a Member of Congress is affiliated, this Committee, in Advisory Opinion No. 1, issued January 26, 1970, advised Members concerning the prohibition of 18 U.S.C. § 203:

> The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

The Department of Justice, in an informational letter, has also indicated that section 203 "bars a partner in a law firm from sharing in any fees received by the firm for representational activities performed by the firm before any department or agency during the time he is or was a Federal employee" or official. Although such a fee-sharing or partnership arrangement might be violative of section 203 when the firm participates in a Federal practice, the Department of Justice was of the opinion that an arrangement other than one where the Federal officer or employee shares in the profits of the firm, such as where he receives a fixed salary, may be permitted under the law even when the firm receives some fees for Federal practice. The Department stated that "this office has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203." [96]

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[92] 5 U.S.C. § 501.

[93] ABA Code, Cannon 2, E.C. 2-9, 2-10, and D.R. 2-101, 2-102.

[94] See, House Report No. 364, 64th Cong., 1st Sess.; see also, 53 *Congressional Record* 6312-6314, Apr. 17, 1916.

[95] *United States* v. *Eilberg*, Criminal No. 78-311 (D.C.E. Pa., 1978); 465 F. Supp. 1076 (E.D. Pa., 1979); see, report of guilty plea in *Washington Post*, Feb. 25, 1979, p. Al; this former Member was also suspended from the Pennsylvania bar for these activities, see *Post*, Mar. 30, 1979, p. A9, 441 A. 2d 1193 (Pa., 1982); note also, 507 F. Supp. 267 (E.D. Pa., 1980).

In addition to a Member receiving compensation as a salaried "employee," rather than as a partner in a law firm with a Federal practice, other devices might be employed in an attempt to avoid the problem of receipt of compensation for services rendered by partners before Federal agencies. Since the receipt of compensation for such services is a necessary element of the offense,[97] a firm might attempt to establish a separate bookkeeping arrangement in which the Member would share in only the fees received for non-Federal matters. Questions may arise in this situation, however, as to the effectiveness of an internal bookkeeping system to prevent the Member from sharing in the firms's income from its Federal practice. Arguments could also be raised that general revenues to a firm from its Federal practice, although not accruing directly to the Member, are benefiting the firm as a whole and thus the Member in particular who shares in the firm's general success or failure.

Another device employed to avoid the problem of compensation accruing to a Member from a firm's Federal practice has been the establishment of a "dual partnership," that is, one "non-Federal practice" partnership with which the Member of Congress is associated and one partnership that excludes the Member and engages in practice before Federal agencies. Although such arrangements might in some instances technically circumvent the § 203 problem,[98] the ethics of such a situation have been increasingly questioned, particularly with regard to ABA Disciplinary Rule 5-105(D), which specifically states:

> If a lawyer is required to decline employment or to withdraw from employment under DR 5-105 [conflicts of interest], no partner or associate of his firm may accept or continue such employment.

Since a Member is prohibited from "employment" before Federal agencies, it may be argued that a Member's partners and associates are likewise barred from such employment and compensation. The reasoning behind such a prohibition concerning the avoidance of conflicts of interest by an attorney or his partners was expressed in an opinion of the ABA Committee on Professional Ethics: "The relations of partners in a law firm are so close that the firm, and all the members thereof, are barred from accepting any employment that any one member of the firm is prohibited from taking." [99]

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[96] See, note 44, *supra*.

[97] *May* v. *United States*, *supra;* see, 18 U.S.C. § 205.

[98] 40 Op. Atty. Gen. 287 (1943); New York City Bar Association, Committee on Professional Ethics, Opinions, No. 863, 19 *The Record* 424 (1964).

Discussing the ethics of such arrangements, the Association of the Bar of the City of New York, in its work *Congress and the Public Trust*, offered the following observations and conclusions:

> Whether or not such dual arrangements technically comply with formal rules of ethics, their appearances are damaging to the public, the Congress, and the legal profession. Under the higher-than-market-place standards which lawyers and Members of Congress should follow, we strongly recommend that those law firms which include Members of Congress who continue to practice for any reason terminate any such dual arrangements and accept no employment forbidden to the Member of Congress * * *.
>
> The Federal agencies before which a Congressman's partners practice are creatures of Congress. The Member of Congress votes on their appropriations and writes the statutes they administer. Federal officials may be influenced by a Congressman's partner's appearance in much the same way they would be influenced by the Member himself.[100]

Other general rules. If a Member does engage in the practice of law during tenure of office, the Member should be aware that in addition to the limitation on outside earned income and the restrictions on particular practices discussed above, the regulations on outside compensation by Members would generally apply. In addition to not receiving compensation for services before Federal agencies, the Member should not accept compensation because of influence improperly exerted from his position in Congress; may not accept compensation from foreign governments; and may not hold or enjoy contracts with the United States Government. Further, the ABA has promulgated ethical standards and Disciplinary Rules that would be applicable to attorneys who hold public positions.

Canon 9 of the ABA Code of Professional Responsibility provides generally that "A lawyer should avoid even the appearance of professional impropriety." More specifically, Disciplinary Rule 8-11 provides:

> (A) A lawyer who holds public office shall not:
>
> (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
>
> (2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or a client.

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[99] Opinion No. 33 (1931).

[100] Association of the Bar of the City of New York, Special Committee on Congressional Ethics, *Congress and the Public Trust*, New York, 1970, James C. Kirby, Exec. Dir., pp. 113 & 115.

(3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

Employment Considerations for Spouses of Members. In general, spouses are free to obtain employment notwithstanding their relationship to a Member of Congress. However, many House rules and statutory provisions impute to a Member certain benefits that are received by a spouse. Thus, certain forms of the spouses's outside employment may pose special problems.[101]

Neither Federal law nor House rules contain provisions that specifically preclude the Member's spouse from engaging in activity that may, under certain circumstances, create a conflict of interest. However, general ethical standards require that any relationship between the Member's compensation or benefits from a private source and the performance of congressional duties be examined for real or apparent conflict or other impropriety.

House Rule XLIII, clause 3, part of the Code of Official Conduct, prohibits a Member from receiving any compensation, or allowing any compensation to accrue to the Member's beneficial interest, from any source as a result of influence improperly exerted from the Member's position. Additionally, the Code of Ethics for Government Service,[102] proscribes the receipt of benefits "under circumstances which might be construed by reasonable persons as influencing the performance" of the recipient's official duties. Obviously, the income received by a spouse from employment accrues, albeit indirectly, to a Member's interest. Nonetheless, neither of these provisions are triggered without concrete circumstances indicating that such benefits have resulted from improperly exerted influence or that official acts have resulted from the prospects of private compensation to the spouse and, thus, indirectly to the Members.

As to the effect of a spouse's activities have on a Member's ability to vote on issues of concern, House Rule VIII, clause 1, instructs Members to vote on each question presented unless they have "a direct personal or pecuniary interest in the event of such question." House precedents make clear that the application of the rule is directory, rather than mandatory, and that the determination of a disqualifying interest is one peculiarly for the Member.[103] It is also equally clear, however, that, under the rule, a disqualifying interest in legislation must be one that affects the Member separately and distinctly and not merely as a member of the general public. For example, as to financial interests of Members and their voting on legislation affecting those interests, House precedents have held that Members holding stock in national banks may vote on legislation affecting banking practices since Members would not have an interest separate and distinct from a class and, within the meaning of House Rule VIII, clause 1, distinct from the public interest. The determination of whether an issue deals with a "disqualifying interest," however, is left to the Member.

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[101] See Marc E. Miller, Congressional Management Foundation, *Politicians and their Spouses' Careers*, Washington, D.C., Tilden Press, Inc., 1985.

[102] *Supra*, para. 5.

[103] See *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, 99th Cong., §§ 657–659.

Caution must also be exercised regarding the receipt of gifts. Although House Rule XLIII, clause 4, limiting the amount in gifts a Member may receive from a person with a direct interest in legislation, provides an exclusion from the rule for gifts from relatives, confusion may arise as to the true source and recipient of a gift.[104] Thus, a Member should exercise care in determining the true source of gifts given by a spouse, as well as whether gifts received by a spouse are not, in fact, indirect gifts to the Member from organizations with an interest in legislation. Such gifts are distinct from those that the spouse may receive wholly independent of the marital relationship.

In the 98th Congress, this Committee formally addressed matters relating to spouses in two instances. In one matter, a Member was found to have violated rules relating to standards of conduct for filing false Financial Disclosure Statements under the Ethics in Government Act.[105] Among the transactions involved were a bank loan to the Member's wife, the payoff of that loan by a third party, and receipt of the proceeds of a commodities transaction. The Member had previously been convicted of four counts of knowingly and willfully filing a false statement, pursuant to 18 U.S.C. § 1001.[106]

Only the source of a spouse's outside income over $1,000, not the amount, need be shown on a Member's Financial Disclosure Statement. Other information concerning a spouse (as well as a dependent) must be reported with the same degree of detail as that required of the Member, except for the following:

> * * * items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest and responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.[107]

In finding, in another instance, that a Member had improperly claimed the spousal exemption, this Committee noted that "[i]t is only in rare circumstances * * * that the exemption is available." [108]

Spouses of Members who accept positions with Federal, State, or local governments should be aware of a special limitation. Under the "Hatch Act," [109] most employees in the executive branch of

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[104] See, the detailed discussion of gifts in Chapter 2 of this manual, especially Advisory Opinion No. 9 of the House Select Committee on Ethics, 95th Congress, which appears at the conclusion of that chapter.

[105] *In the Matter of Representative George V. Hansen*, House Report No. 98-891, 98th Cong., 2d Sess., July 19, 1984. See, Ethics in Government Act of 1978, as amended, 2 U.S.C. § 701, *et seq.*

[106] *United States* v. *George Vernon Hansen*, 566 F.Supp. 621 (D.D.C., 1984), *aff'd* 772 F.2d 940 (1985), *cert. den.* 106 S.Ct. 1262 (Mar. 3, 1986).

[107] Sec. 102(d)(1)(D) of the Ethics in Government Act of 1978, as amended, 2 U.S.C. § 702(d)(1)(D).

[108] *In the Matter of Representative Geraldine A. Ferraro*, House Report No. 98-1169, 98th Cong., 2d Sess., Dec. 4, 1984, at p. 25.

[109] 5 U.S.C. § 7324, *et seq.*; see also, 5 C.F.R. Part 733.

Government may not take an active part in political campaigns. While certain political appointees and their aides are not covered, spouses of Members of Congress have no exemption. Thus, an individual may not be able to actively campaign on behalf of his or her spouse. Because the penalty for violation ranges up to removal or suspension, the employed spouse should determine the propriety of proposed campaign activities.

Federal law, at 5 U.S.C. § 3110, generally prohibits a Federal official from hiring or promoting a relative, including a spouse.

Appendix to Chapter 3

Select Committee on Ethics Advisory Opinion No. 13

SUBJECT: GENERAL INTERPRETATION OF HOUSE RULE XLVII, DEALING WITH LIMITATIONS ON MEMBERS' OUTSIDE EARNED INCOME

1. General

(*a*) *Purpose of rule.*—House Rule XLVII, which was adopted on March 2, 1977 as part of the financial ethics code, limits both the amount of "outside earned income" a Member may have, and also the amount a Member may accept as an honorarium for any single speech, appearance, or article. Two major considerations prompted adoption of the Rule. First, substantial payments to a Member of Congress for rendering "personal services" to outside groups presents a significant and avoidable potential for conflict of interest. Second, it is inconsistent with the concept that being a Member of Congress is a full-time job to permit a Member to have substantial earnings from other employment.

(*b*) *Annual limitation generally.*—Clause I of the Rule prohibits a Member from having outside earned income attributable to any calendar year beginning after December 31, 1978 in excess of 15% * of the Member's salary as a U.S. Representative for that year. In order for an item to be counted against this limitation for a particular year; (i) it must be "outside earned income", within the meaning of Rule XLVII, and (ii) it must be attributable to that year. The Rule defines outside earned income to mean "wages, salaries, professional fees, honorariums, and other amounts (exclusive of copyright royalties) received or to be received as compensation for personal services actually rendered, not including the Member's salary as a U.S. Representative."

Outside earned income is attributed to the year in which the Member's right to receive it becomes certain (i.e., under the accrual method) rather than to the year of receipt. Therefore, receipt of income earned during a particular year cannot be deferred to a future year in which the Member has less outside earned income, or until after the Member retires from Congress.** The limitation is not applicable to compensation for personal services rendered prior to January 1, 1979, the effective date of Rule XLVII, or prior to the effective date of the Member's becoming a U.S. Representative, if later. Outside earned income is determined without regard to any community property law. That is, even though under applicable community property law, one-half of any personal service income earned by the Member is deemed to belong to the spouse, all of such income is considered earned income of the Member for purposes of the Rule.

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* The limit is currently 30% of congressional salary, see H. Res. 305, 97th Congress.

** Honoraria are now attributable to the year in which received (H. Rule XLVII(2)).

(c) Real facts controlling.—The limitations imposed by Rule XLVII may not be avoided by the characterization or disposition of any payment for services rendered. In all cases, the real facts will control. For example, if a Member's spouse, child, other relative, or trust for benefit of any of them, is paid an amount, however denominated, and the true consideration for the payment is services rendered by the Member, the amount will be deemed outside earned income by the Member. Similarly, the label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member are in fact attributable to any significant extent to services rendered by the Member, the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule XLVII to such amounts. Moreover, the Rule applies to outside earned income realized in a medium other than money, for example, in property or services or through a bargain purchase or forbearance in consideration of personal services rendered.

In short, income may not be recharacterized in order to circumvent the Rule. Indeed, characterization of income is essentially irrelevant. For purposes of this Opinion, there are two types of income—earned and unearned. If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.

When such amounts received or to be received by a Member are designated as salary, fees, or commissions, the overriding presumption is that such amounts, almost by definition, constitute compensation for personal services rendered. An honorarium from a speaking engagement, for example, is obviously outside earned income. With respect to income from business ventures, the Committee is convinced that in the overwhelming majority of cases, there will be little or no difficulty in determining whether certain income is subject to the Rule. Again, the facts of each individual case will govern applicability of the Rule, but the principles set forth in this Opinion should be followed in making that determination.

2. Outside earned income from business ventures

This Advisory Opinion differentiates between businesses in which both capital and personal services are material income-producing factors and those in which personal services is the only material income-producing factor.

(a) Personal service businesses.—Where a Member owns or participates in a personal service business, such as a professional practice, in which capital is not a material income-producing factor, his entire share of the profits is deemed to be outside earned income for purposes of the Rule, except to the extent he can demonstrate that his income in fact represents a return on investment. In general, capital is not a material income-producing factor where gross income of the business consists principally of fees, commissions or

other compensation for personal services performed by an individual. Thus, the practice of one's profession by a doctor, lawyer, insurance broker, or real estate agent will not, as such, be treated as a business in which capital is a material income-producing factor. Even where the practitioner may have a substantial investment in professional equipment or in the physical plant constituting the office from which he conducts his practice, the capital investment would be regarded as only incidental to the professional practice.

Moreover, the fact that the Member may not personally participate to any substantial extent in the rendering of services to the customers or clients of the business, all such services being performed by assistants or associates, would not serve to justify classification of his share of the business income as other than earned income. If a Member shares in the profits of a personal service organization without being required to perform any significant productive services, absent a strong showing to the contrary, it will be presumed that the Member is being compensated for attracting or retaining customers or clients, and such income is considered outside earned income.

Law practices.—Since there are a number of attorneys serving in the House of Representatives, for purposes of example, application of the Rule to practice of law is specifically addressed in this Opinion. Those Members who currently maintain an active affiliation with a law firm may now wish to enter into a buy-out agreement with their partners in order to liquidate their equity in the firm. This is perfectly appropriate. Amounts received or receivable by a Member in payment for his interest in a law firm or similar organization upon his retirement from it would not constitute outside earned income so long as the amounts payable do not, in effect, represent a continuing participation in the law firm and the total amount payable is not in excess of the fair market value of the Member's interest. Normally such arrangements call for fixed payments at annual or more frequent intervals over a period of years. In some cases, however, the retiring partner and those continuing the business are unable to agree on a value for one or more assets of the business, such as contingent fee cases or accounts receivable of dubious value, and the buy-out agreement may accordingly provide that the retiring partner will be paid a share of such items, if, as and when they are collected.

Payments to a Member under a buy-out agreement will not be deemed to be outside earned income where the arrangements are entered into in good faith and agreed to by all the partners, and reflect the usual and customary value of the equity generally accorded to partners in similar law practices in the same geographic area. A buy-out agreement should also be reasonably calculated to avoid the Member's participation in post-withdrawal profits. In general, the proceeds resulting from a buy-out agreement are taxed as capital gains. If such an agreement is not limited to liquidation of the Member's equity in the firm, and includes payments which might be taxable as earned income, any such payments under the agreement might be subject to the earned income limitation.

The Committee notes that Rule XLVII does not prohibit continued affiliation with a law firm, as does the Senate Rule on outside earned income. However, those Members who wish to retain an interest in a law firm after the effective date of the Rule may be required to lessen their active involvement in the firm because of the earned income limitation. Accordingly, the Committee makes reference to the American Bar Association Code of Ethics, which states in part: "A lawyer who assumes . . . a legislative post . . . shall not permit his name to remain in the name of a law firm or to be used in the professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm." (ABA Disciplinary Rule 2-102B). Depending upon the particular circumstances involved in each case, this provision may have some bearing on a Member's continued affiliation with a law firm.

For those Members who will choose to remain formally affiliated with a law firm, some of their income from the law firm may be in the form of return on equity. In recognition of the principle that any capital investment in a business is entitled to a reasonable return, this Opinion provides that a Member may treat as unearned income a portion of his share of the profits from the law firm, as from any other personal service business, equal to interest computed at 10 percent per annum on his investment in the business assets (after adjustment to exclude investment income and expenses, if any). For purposes of this 10 percent computation, the Member's investment in business assets will ordinarily be represented by the average balance of his capital account during the year, where the business interest is a proprietorship or partnership, or by the average book value of his stock, where the investment is in a subchapter S corporation. In general, a Member's equity in the firm would not exceed the amount he would receive pursuant to a buy-out agreement, and should be calculated to avoid any benefit accruing to the Member from increased profits subsequent to the effective date of the Rule.

(b) Businesses where capital is a material income-producing factor.—Capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital, as reflected, for example, by a substantial investment in inventories, plant, machinery or other productive equipment. This Opinion discusses the application of the Rule in such cases to income from a fully taxable corporation and income from an unincorporated business or subchapter S corporation.

(1) Taxable corporations

If a Member renders services to a fully taxable business corporation, he will not be deemed to realize outside earned income from such services beyond the amount of salary or other form of extra compensation designated as consideration for the personal services rendered. In those cases where the Member's sole financial interest is stock in the corporation, an increase in the net assets of the corporation would not be considered to be subject to the limitation. An increase in the value of stock or other property is not ordinarily treated as earned income either for tax purposes or under generally accepted accounting principles; and any increase in the corporation's net profits would be subject first to corporate income tax and then to personal income tax before the Member receives any resulting increment to his wealth through a dividend or sale of his stock. The foregoing has no application, of course, to income which a Member earns through his personal efforts in dealings with third parties but causes to be paid to a corporation and then distributed to him. For example, if a Member incorporates himself for the purpose of conducting a speaking business, and all fees for his speaking engagements are paid to the corporation from which he then draws "profits", all such amounts would be considered to be outside earned income.

In sum, if a Member renders services to a taxable corporation, only the salary or other compensation he receives for those services would be subject to the limitation, but not any increase in the corporation's assets or his share of the profits. This ruling is consistent with the intent of the Commission on Administrative Review which recommended the limitation on outside earned income. In its report (Document No. 95-73), the Commission stated that ". . . Members should be able to render personal services to manage or protect their equity . . . without having to allocate these personal services toward the 15 percent limitation."

(2) Subchapter S corporation, partnership, unincorporated business

In those cases where the Member has an ownership interest in a business for which he also performs services, as in a subchapter S corporation or a partnership, some part of his share of the profits of that business may reflect the value of his services, and thus would be considered outside earned income. The determining factor is whether the Member's personal services generate significant income for the business. Of course, if the Member receives formal compensation from the business, for example, payments designated as salary or fees, such amounts would be considered earned income. Additionally, in those cases where other partners or associates are providing capital and managerial expertise, and the Member's principal role is to refer clients to the business or to help retain existing customers or clients, the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal. However, if the Member is engaged primarily in the general oversight and management or protection of his investment, his services would not be deemed to generate significant income. Such non-income generating services would include consultation with other management officials, analysis of financial and other reports, participation in formal meetings, and making decisions concerning the general operations and investment strategy of the business.

The application of the Rule to the various types of business organizations as discussed in this Opinion applies equally to a business owned or controlled by the Member or his family. Again, the determining factor is whether or not the personal services of the Member actually generate any significant income for the business. In those situations where the services rendered by the Members are incidental and do not generate significant income, no part of his share of the profits or any increase in the assets of the business would be deemed to be outside earned income.

The Committee emphasizes that the definition of earned income in Rule XLVII, which excludes amounts received by a Member from a family controlled business "so long as the personal services actually rendered by the Member . . . do not generate a significant amount of income," was simply intended to assure Members that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member would not be required to allocate his share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment. For example, if the Member owns a hardware store and the services he renders are incidental, such as occasionally serving customers, the income received from the business is basically a return on equity, (i.e., profits from the sale of hardware goods) and is not generated by the Member's services. Similarly, if the Member's family owns a farm and the Member gives overall direction to the management of the business, the income received from the farming operations is not generated by the Member's personal services, but rather is basically a return on equity from the sale of crops or dairy products. These types of businesses are distinguishable from a personal service business where income is essentially produced by the services of the individual affiliated with the organization.

(3) When income is accountable

(a) Income from pre-effective date services.—The Rule excludes from earned income any compensation derived by a Member for personal services actually rendered prior to the effective date of the Rule (January 1, 1979) or prior to the effective date of the Member's becoming a U.S. Representative, if later. This provision would serve to exclude from the limitation, for example, most renewal commissions paid to a Member with respect to life insurance policies sold by him prior to the effective date, or similar commissions received by a Member with respect to pre-effective date leases in which the Member was a leasing agent. In most such arrangements, payment of the commission is not contingent upon the performance of any future services by the recipient; the only contingency is that the insured or lessee continue to pay premiums or rent, as the case may be. The pre-effective date exclusion would also apply to a fee received by a lawyer-Member after the effective date where all the work had been done prior to the effective date. However, this exclusion would not apply to income derived from the continuing or future business of clients brought into the firm prior to the effective date of the Rule.

(b) Application of limitation to part years.—Where an individual becomes a Member during any calendar year beginning after December 31, 1978, the Rule applies only to outside earned income of the new Member attributable to periods after the effective date of his becoming a member. For the balance of the calendar year in which he becomes a Member, the applicable limitation will be 15% of the Member's salary as a U.S. Representative for that part year, and only outside earned income attributable to that part is counted against the limitation.

(4) Other provisions

(a) Payments attributed to deferred compensaton plans.—Amounts received by a member from a tax-qualified pension, profit sharing or stock bonus plan are not treated as outside earned income, as provided in the Rule, nor are contributions to such a plan counted as outside earned income. Amounts received by a Member from a non-qualified deferred compensation plan which were earned in a year prior to the effective date of the Rule are not outside earned income for the year received under the principle explained in section 3(a), provided no part of the consideration for such payments is current services. Amounts set aside for a Member under a non-qualified deferred compensation plan for services rendered after the effective date of the Rule will generally constitute outside earned income of the Member for that year, even though they will not be received until a later year, unless receipt is subject to a substantial risk of forfeiture.

(b) Assignment of income to charities.—Notwithstanding the general holding of this Opinion that a Member cannot deflect the application of the Rule by assigning to another income which he in fact earned through rendering services, earned income assigned by a Member to a tax-exempt charity will not be counted as part of the Member's outside earned income, provided the member is not a "disqualified person" with respect to the recipient organization within the meaning of section 4946(a) of the Internal Revenue Code. For purposes of the Rule, such income would not be deemed to have been "received" by the Member provided that he did not personally benefit in any way from such income.

*(c) Honoraria.**—Clause 2 of Rule XLVII provides that no member may, in any calendar year beginning after December 31, 1978, accept any honorarium of more than $750 in value for any single speech, appearance, or article by the Member. In computing the amount of any honorarium for purposes of the $750 limitation, there shall not be taken into account the reimbursement of any actual and necessary travel expenses incurred by the Member in earning the honorarium. To the extent any such travel expenses are not reimbursed, the amount of the honorarium shall be reduced accordingly. Payment of actual and necessary travel expenses of a spouse (or another family member) accompanying the Member is also excluded from the limitation, consistent with the Federal Election Commission regulations governing receipt of honoraria.

Under Section 1(b) of this Opinion, outside earned income is attributed to the year in which the Member's right to receive it becomes certain rather than to the year of receipt, (i.e., the accrual method). With respect to honoraria, however, the accrual method could cause some particular confusion in the case of a Member giving a speech in December but not receiving actual payment until January. Because of the potential problems that could arise, Members would have the limited option of using a cash basis for receipt of honoraria for purposes of the Rule.

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* Honoraria limits are now governed by statute, 2 U.S.C. § 441i, which sets a per-event limit of $2,000 for speeches, appearances and articles.

Chapter 4. STAFF COMPENSATION AND DUTIES

Highlights

A Member, officer, or employee of Congress may not
- —hire, promote, or recommend for promotion a relative;
- —discriminate on the basis of race, color, religion, sex, age, or national origin in hiring, pay, or working conditions;
- —prevent someone, or threaten to prevent someone, from getting a federal job or benefit in order to obtain a political contribution or to coerce political activity.

Employees of the House may not be required to
- —divide or share their salaries;
- —"kick back" a portion of their salaries to a Member or an aide;
- —spend personal money to benefit a Member or the operation of a Member's office;
- —agree to apply part of their future salaries to some indebtedness or obligation of the Member.

Members and employees of the House should note that
- —no formal job descriptions exist for those on the clerk-hire rolls of a Member and for those on committee staffs;
- —a House employee is paid from United States Treasury funds for the regular performance of official duties that are commensurate with the compensation received;
- —employees are not compensated to perform nonofficial, personal, or campaign duties on behalf of a Member or anyone else.

With concern to House employee participation in political campaign activities, Members and employees should note that
- —employees of the House are not covered by the "Hatch Act;"
- —once required official duties have been fulfilled, the employee is free to voluntarily engage in campaign activities;
- —employees may not make political contributions to a Member of Congress who is the employer or employing authority of the contributor.

As to outside employment, House employees should note that generally
- —they must not allow an outside job to interfere with fulfilling and performing their official congressional duties and so must restrict outside employment to their free time, and
- —in addition to a possible "time" conflict, an inherent conflict of interest may exist between the "substance" of one's outside employment and one's congressional job.

Chapter 3 contains additional information on outside employment. Chapter 8 provides additional information on campaign activities. Questions regarding Members' clerk-hire allowances should be directed to the Committee on House Administration.

Advice and opinions on the ethics or possible conflicts of interest regarding the matters raised in this chapter should be sought from one's supervisory personnel and from the Committee on Standards of Official Conduct.

Chapter 4. STAFF COMPENSATION AND DUTIES

Although numerous laws have been enacted to deal with certain employment and compensation issues and problems of employee-employer relations in the private, as well as Federal, sector, Congress itself does not generally come within the coverage of such legislation. Specific statutes, regulations, and rules, however, have been adopted that apply to the House. This chapter discusses restrictions on nepotism, discrimination in hiring and compensation, regulations on pay for clerk-hire individuals, protection against employees' being required to share or divide their salary with another, and the protection of employees from "kickback" schemes or salary assessments. The ability of House employees to engage in campaign activity and outside employment is also briefly addressed.

With respect to utilization of staff, it is important to note that no formal job descriptions or uniform work standards exist for most employees of the House. Matters such as the general terms, conditions, and specific duties of employment traditionally have been within the discretion of the employing Member or committee.

In general, the basic standard for compensation of employees of the House is that the employee has regularly performed official duties reflecting the compensation received.[1] Despite the absence of formal job descriptions, employees of the House are paid from funds from the United States Treasury to perform public duties. Employees are compensated to assist a Member in official responsibilities [2] or to work on official committee business [3] but not to perform nonofficial, personal, or campaign duties.[4]

General Employment and Compensation Provisions. Regulations covering a Member's clerk-hire allowance and the employment of committee staff have been promulgated by the Committee on House Administration. These regulations, included in the *Congressional Handbook of the U.S. House of Representatives,* should be referred to for specific requirements in this area. Some of the provisions of those regulations are briefly discussed below.

The clerk-hire allowance of a Member of the House is available for the employment of up to 18 permanent employees for the Member's staff. The regulations issued by the Committee on House Administration establish the total amount of the clerk-hire allowance, maximum monthly payout, and maximum and minimum annual rates of employee salaries. The regulations note the requirement that compensation from the clerk-hire allowance is available only for services performed in Washington, D.C., or in the state or district that the Member represents. Guidelines are also provided for minimum length of employment, reemployment rules, and leave.[5]

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[1] "Regulations and Accounting Procedures for Allowances and Expenses of Members, Committees, and Employees of the U.S. House of Representatives," Section 2, Part II, para. B(3) and Section 3, Part III, para. C. at pp. 2.5 and 3.3, respectively of the *Congressional Handbook of the U.S. House of Representatives,* issued by the Committee on House Administration, Sept. 1985 (hereinafter cited according to *Congressional Handbook* page or section); Order of the Committee on House Administration, adopted Oct. 21, 1981, para. 6, see also, House Rule XLIII, cl. 8; see, Code of Ethics for Government Service, 72 Stat., Part II, p. B 12, para. 3.

[2] See, for example, Legislative Appropriations Act of 1984, P.L. 98-51, 97 Stat. 268.

[3] See, House Rule XI, cl. 6(a)(3) and (b).

[4] See, *United States* v. *Diggs,* 613 F.2d 988, 995-997, 1002 (D.C. Cir., 1979), *cert. den.* 446 U.S. 982 (1980).

The rules concerning the appointment of committee staff are generally set out at House Rule XI, clause 6. These provisions establish the number of professional and clerical staff that may be employed by the standing committees of the House[6] and set a limit on rates of pay for such employees.[7] Regulations and guidelines for employment and compensation of committee staff are also set out in Section 3 of the *Congressional Handbook.*

The regulations of the Commitee on House Administration provide for the certification of an employee's salary for official duties on a monthly basis. Salaries are to be disbursed to employees only upon a monthly certification by the appropriate Member, committee and subcommittee chairmen, or officer of the House "as to the amount of said salary, the physical location of each employee, the regular performance of official duties, and the relationship of each employee to any current Member of Congress." Compensation may be received only for official duties performed by the employee within the preceding month. Advance payment to an employee would be contrary to the regulations.[8]

Under Federal law, employees of the House may not be required, and are not allowed, to share a House position with another or to divide their House salary with another person.[9] Further, House employees are required to perform the duties for which they are compensated, as they are specifically prohibited under Federal law from subletting, or being required to sublet, to another any portion of their official duties.[10]

Nepotism. Federal law, at 5 U.S.C. § 3110, generally prohibits a Federal official, including a Member of Congress, from appointing, promoting, or recommending for appointment or promotion any "relative" of the official to any agency or department over which the official exercises authority or control. The statute specifically lists those relations of a public official that come within the provision as a "relative" of the official as—

> an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

Certification as to an employee's relationship to a Member of Congress must be made on payroll authorizations by the employing

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[5] See, *Congressional Handbook*, sec. 2.

[6] See, House Rule XI, cl. 6; see also, cl. 5.

[7] See, House Rule XI, cl. 6(c); see also, *Congressional Handbook*, sec. 3.

[8] See, note 1, *supra*.

[9] 2 U.S.C. § 86.

[10] 2 U.S.C. §§ 87 and 101.

Member or committee and subcommittee chairmen. The antinepotism law, as applied in the House, would thus prohibit the hiring of a relative of a Member on that Member's staff or on the staff of a committee or subcommittee that the Member chairs.

The antinepotism statute was upheld by a lower Federal court against the challenge that the provision is unconstitutionally overbroad by finding that the statute is limited in its applicability to only "specified kinship relationship." [11] The statute would therefore not cover "relatives" who are not specifically listed in the statute as those within the prohibited class. Thus, for example, under common legal usage, and as construed by the Office of Personnel Management in interpreting this provision, although "niece" and "nephew" of an official (the children of the official's brother or sister) are within the prohibition, the niece or nephew of an official's spouse (the children of the brother or sister of an official's spouse) would apparently not be included in the prohibited class.[12]

It should be noted that if a Member's relationship to an employee changes because of the marriage of two previously unrelated individuals, the employee may remain on the Member's personal or committee staff. However, the Member could not take future favorable personnel action with respect to the newly-related individual. The statute does not prohibit a Member employing two individuals related to each other, but not to the Member.

Discrimination. The Rules of the House of Representatives, at Rule XLIII, clause 9, specifically forbid a Member or an employee of the House to discharge or refuse to hire any individual, "or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, or national origin." [13] Rule XI, clause 6(a)(3), also provides that professional staff shall be appointed "without regard to race, creed, sex, or age, and solely on the basis of fitness to perform the duties of their respective positions." Clerical staff of the committees are likewise to be appointed "without regard to race, creed, sex, or age." [14] In addition to these House rules, a Member of Congress may be subject to suit and liability for discriminatory employment practices in violation of the equal protection component of the Fifth Amendment to the United States Constitution.[15]

Bribes, Political Activities, or Contributions for Jobs. Criminal provisions of the United States Code prohibit a range of actions relating to the use of Federal jobs for inducing political activities, bribes, contributions, or the receipt of anything of value. Specifically, Federal law, at 18 U.S.C. § 211, prohibits the solicitation or receipt of anything of value in return for promising support or use of influence in obtaining a Federal post for someone. As to political activities, 18 U.S.C. § 599 prohibits candidates from directly or indirectly promising appointment or use of influence or support in obtaining for someone "any public or private position or employment" in return for political support. Under 18 U.S.C. § 600, no individual may promise a Federal job or benefit to a person as consideration or reward for political support or opposition to any candidate or party. It is also improper under 18 U.S.C. § 601 to deprive or threaten to deprive anyone of a Federal job or benefit as a way to induce political contributions, including services, for a candidate or party.

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[11] *Lee* v. *Blount*, 345 F. Supp. 585, 588 (1952).

[12] *Black's Law Dictionary*, 4th Ed., 1968; *Ballentine's Law Dictionary*, 3rd Ed., 1969; *Federal Personnel Manual*, United State Office of Personnel Management, ch. 310, subch. 1, sec. 102(c).

[13] The rule was amended by H. Res. 5, 100th Cong., 1st Sess., to include age; see, *Congressional Record*, Jan. 6, 1987, H6–16, (daily ed.).

[14] House Rule XI, cl. 6(b)(1).

[15] *Davis* v. *Passman*, 442 U.S. 228 (1979). See also, *Hanson* v. *Hoffman*, 628 F.2d 42 (D.C. Cir., 1980).

Salary Kickbacks. Salary "kickback" schemes may involve a process whereby a staff employee agrees, under coercion as a condition of employment, to remit or kick back a portion of the employee's salary to the employing Member or an influential aide or to apply a portion of the salary for goods or services for the Member's benefit. Other schemes may involve the designation by a Member or an aide of certain persons on the congressional payroll who actually perform no congressional duties. The salary proceeds for these individuals are turned over to the Member or aide involved.

Federal law contains no statutory provision that expressly describes or is exclusively aimed at conduct such as described. However, several Members of Congress and congressional aides involved in kickback schemes have been indicted and prosecuted under the general fraud statute at 18 U.S.C. § 1001.[16] This criminal statute specifically prohibits the making of any false, fictitious, or fraudulent statements or knowingly covering up or concealing, by any trick or scheme, a material fact concerning matters in the jurisdiction of any Federal department or agency. The Supreme Court has found that making false or fraudulent statements or falsifying or concealing a material fact on payroll vouchers or certifications to a disbursing officer of the House to further a kickback scheme was covered within the prohibition of the statute.[17]

The United States Court of Appeals for the District of Columbia, in upholding the conviction of a Member of the House under 18 U.S.C. § 1001, held that a Member's failure to disclose to the House payroll office the real purpose of pay to employees in a kickback scheme, where such funds were applied to personal and official expenses of the Member, was a material omission in violation of the provision:

> In this case, the defendant was accused of falsifying the payroll authorization forms submitted to the House of Representatives Office of Finance for his employees. . . . In seeking payroll increases for these employees, [the Congressman] failed to disclose to the Office of Finance the *real purpose* for which the monies were intended—the defrayal of his personal and congressional expenses. Had the

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[16] See, for example, reports or indictments and/or convictions appearing in the press concerning Representative Bramblett, *Washington Post*, Feb. 4, 1954, p. 17, and *New York Times*, Feb. 10, 1954, p. 1; Representative J. Parnell Thomas, *Washington Post*, Nov. 11, 1948, pp. 1 and 9, and *New York Times*, Dec. 6, 1948, p. 1; Representative J. Irving Whalley, *Washington Post*, Aug. 1, 1973, p. Cl; George A. Haag, aide to Representative Collins of Texas, *Washington Post*, June 14, 1975, p. A3; Representative James Hastings, *Washington Post*, Dec. 18, 1976, and *New York Times*, Dec. 17, 1976; Representative Charles Diggs, *Washington Post*, Oct. 8, 1978; p. Al; indictment of Michael McPherson, aide to Representative William Clay, *Wall Street Journal*, Sept. 22, 1976, and *Washington Post*, Sept. 22, 1976, p. A2.

[17] *United States* v. *Bramblett*, 348 U.S. 503 (1955).

> defendant revealed these intentions, it reasonably could be expected that the Office of Finance would not have honored the payroll requests or at least would have referred the matter to the appropriate House committee for advice. We hold, therefore, that the defendant's omissions were material.[18] [Emphasis in the original.]

A violation of the Federal mail fraud statute also may occur when the mails are used to distribute the payroll checks or other funds in furtherance of a kickback scheme.[19]

With respect to a Member's clerk-hire allowance, this Committee has noted in an advisory option that

> * * * it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations * * *.
>
> The opinion clearly would prohibit any Member from retaining any person from his clerk-hire allowance under either an express or tacit agreement that the salary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations or any other nonrepresentational service.[20]

Performance of Official Duties. The specific duties of a Member's staff or a committee staff have traditionally been within the discretion of the employing Member or committee to best meet the specific needs and requirements of that Member and his constituents or the employing committee.[21] Regulations issued by the Committee on House Administration provide as a general standard of compensation that the salary of a House employee will be disbursed by the Clerk only upon a monthly certification as to the "regular performance of official duties" by such employee.[22]

The appropriation for clerk-hire allowances routinely provides that such allowances are for securing staff to provide assistance to Members in the discharge of official and representational duties.[23] The House rules state that professional staff members of the standing committees of the House are to engage only in work of "committee business; and shall not be assigned any duties other than those pertaining to committee business." [24] The rules further provide that the clerical staff of the House standing committees shall work on "matters related to committee work." [25]

A general ethical standard recognized by the House instructs all employees to "Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought." [26] Finally, the Rules of the House specifically provide that a Member shall "retain no one from his clerk-hire allowance who does not perform duties commensurate with the compensation he receives." [27]

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[18] *United States* v. *Diggs, supra*, p. 999.

[19] *United States* v. *Diggs, supra*, pp. 997–999, 1002–1003; *United States* v. *Clark*, Criminal No. 78–207 (D.C. W.Pa., 1978).

[20] House Committee on Standards of Official Conduct, Advisory Opinion No. 2, July 11, 1973; see, House Report No. 96–351, 96th Cong., 1st Sess.; the full text of this advisory opinion appears at the conclusion of this chapter.

[21] Some House employees, generally those under the employ of an officer of the House, will be subject to the House Employees Position Classification Act (2 U.S.C. § 291, *et seq.*) and regulations on applicable employment standards issued by the Committee on House Administration.

[22] See note 1, *supra*.

[23] See note 2, *supra*

[24] House Rule XI, cl. 6(a)(3).

[25] House Rule XI, cl. 6(b)(1).

Thus, the underlying standard for the receipt of compensation by an employee of the House is that the employee has regularly performed official duties commensurate with the compensation received. Employees are paid United States Treasury funds to perform public duties. Appropriated funds are to be used solely for the purposes for which appropriated (31 U.S.C. § 1301(a)). Funds appropriated for congressional staff to perform official duties should be used only for assisting a Member in his legislative and representational duties, working on committee business, or performing other congressional functions.[28] Employees may not be compensated from public funds to perform nonofficial, personal, or campaign activities on behalf of the Member, the employee, or anyone else.[29]

Various legal actions have been initiated against Federal office holders under appropriations principles, the general theory of misuse of appropriated funds, and fraud. Some civil suits have been filed by private individuals against Members of Congress under the provisions of the False Claims Act for claiming Federal salaries for staff employees who were allegedly providing nonofficial personal services.[30] These cases by private individuals have generally proved unsuccessful on procedural grounds when the Department of Justice has not pursued the matter on behalf of the government.[31]

One private individual alleged in a suit filed under the False Claims Act that a Member of the Senate authorized payment of the Federal salary of his administrative assistant during a period when the aide worked exclusively on the Senator's reelection campaign. The United States Court of Appeals for the District of Columbia Circuit determined that there were no judicially manageable standards for resolving the question and dismissed the suit on the grounds that it presented a nonjusticiable political question.[32] The absence of a definitive ruling should not be read as suggesting that it is appropriate under the House rules to compensate an employee for campaign or other nonofficial work.

Criminal indictments were obtained by the Department of Justice in two separate matters against a then-current and a former

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[26] Code of Ethics for Government Service, 72 Stat., Part II, B 11, para. 3.

[27] House Rule XLIII, cl. 8.

[28] See, 2 U.S.C. § 85.

[29] In *United States ex rel. Joseph* v. *Cannon*, 642 F.2d 1373, 1380 (D.C. Cir., 1981), *cert. den.* 455 U.S. 999 (1982), the court indicated that 31 U.S.C. § 628 (subsequently recodified as 31 U.S.C. § 1301(a)) and provisions of the legislative branch appropriations acts may require appropriated funds to be used to compensate staffers for official duties but held that whether campaign work is official activity is a nonjusticiable political question.

[30] See, *United States ex rel. Thompson* v. *Hays*, 432 F.Supp. 253 (D.D.C., 1971).

[31] But, see, *United States ex rel. Hollander* v. *Clay*, 420 F.Supp. 853 (D.D.C., 1976) pertaining to use of Federal funds when the Department of Justice entered suit.

[32] *United States ex rel. Joseph* v. *Cannon, supra,* at 1379. (The internal quotation is from *Baker* v. *Carr*, 369 U.S. 186, 217 (1962).) Another count in the case, which alleged that other members of the Senator's staff performed personal services for him and his family while receiving their congressional salaries, was dismissed for vagueness, plaintiff not having cited any particular instances in which personal tasks were performed in return for Federal salaries. 642 F.2d, at 1385–86.

Member of the House for allegedly placing persons on their respective congressional payrolls who did not regularly perform official congressional duties but rather performed personal services or duties for or on behalf of the Members.[33] The indictments included charges of fraud, mail fraud, and perjury. A jury handed down a conviction, which was upheld through appeal, on all counts of the indictment in one instance.[34] The former Member pleaded guilty to charges in the other case.[35]

The United States Court of Appeals, in upholding the fraud conviction of the Member of Congress, noted that although the employees had performed some official services for the Member, "only a nominal percentage of [the employees'] responsibilities were comgressionally related," and thus a jury had sufficient evidence to conclude that such employees were paid from clerkhire allowances "with the intention of compensating them for services rendered to the [defendant Member's private business concern] or the defendant."[36] Thus, although it might be argued that "it was a matter of [the Member's] discretion to fix their duties and salaries as congressional employees," the "defendant's representations to the House Office of Finance that the [employees] were *bona fide* congressional employees were fraudulent and material in violation of 18 U.S.C. § 1001." [37] A civil case initiated by the Department of Justice as a follow-up to its criminal prosecution was dismissed on the Government's motion because the Member's financial situation would have made it impossible to execute any judgment.[38]

The various provisions that require House employees to regularly perform official congressional duties commensurate with the public compensation they receive are not to be interpreted as imposing unreasonable rigidity This Committee has stated with respect to the performance of official duties by those on the clerkhire rolls:

> * * * [D]ue to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times these employees may work more than double the usual work week—at others, some less. These employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods.[39]

A United States Court of Appeals, summarizing the testimony of a House officer, noted that it is "within a congressman's discretion to define the parameters of an employee's responsibilities as long as those responsibilities related to the congressman's 'official and representational duties.' " [40] There is no conclusive listing of what a Member's "official and representational duties" entail. However, the Supreme Court discussed such a concept in a different context and noted that "legitimate" activities of a Member include things said or done in the House relating to official duties and include "legitimate 'errands' performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called 'newsletters' to constituents, news releases and speeches delivered outside Congress." [41]

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[33] *United States* v. *Diggs*, Criminal No. 78-142 (D.D.C.); *United States* v. *Clark*, *Supra*.

[34] See note 4.

[35] See, report in *Washington Star*, Feb. 14, 1979, p. A4; *Congressional Quarterly Weekly Report*, June 23, 1979, p. 1263.

[36] *United States* v. *Diggs*, *supra*, n 4., at 1002.

[37] *Id.*

[38] *United States* v. *Diggs*, Civ. No. 79-2148 (D.D.C. dismissed without prejudice Aug. 4. 1980). The Member resigned from the House while the civil action was pending.

[39] See note 20, *supra*, and the full text of the opinion at the conclusion of this chapter.

[40] *United States* v. *Diggs*, *supra*, n 4., at 997.

Political and Campaign Activity by House Employees. As long as employees complete those "official" duties required by the Member and for which the employees are compensated from public funds, they are generally free to engage in personal, campaign, or other nonofficial activities. No Federal statutes, regulations, or rules specifically prohibit employees of the House from engaging in general campaign activity. The board prohibition against campaign activity by executive branch personnel, known as the "Hatch Act."[42] is not applicable to congressional employees. Thus apart from certain restrictions in the area of campaign contributions and solicitations discussed below and in Chapter 8, *House* employees *may* participate in partisan campaign activities.[43]

Under the broad ethical guidelines that direct that House staff fulfill their official congressional duties for which they receive compensation from the Government, campaign activities should not be engaged in to the neglect of their official duties. Similarly, *no* campaign activities should be performed in a manner that utilizes *any* official resources. The United States District Court for the District of Columbia, in a decision concerning the congressional franking privilege, noted Congress' general recognition of the principle that public funds are to be used for official congressional, and not for campaign, purposes: "It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection." [44]

Just as an employee is free to engage in campaign activities on free time once official duties have been completed, no House rules or regulations prohibit an employee from engaging in campaign activities while on annual leave or on leave-without-pay status.

There may, of course, be some debate as to what "official congressional duties entail. Some confusion may derive from the labeling of a Member's official representational duties, such as constituent casework, news releases or newsletters to constituents, as "political in nature," as did the Supreme Court when it distinguished those "legitimate" official *representational* activities not covered by the Speech or Debate Clause from those official *legislative* activities that would be covered by Speech or Debate Clause immunity.[45] However, the general distinction between "official" representational and legislative duties on the one hand and political "campaign" activities on the other is a common and long-standing distinction in

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[41] *United States ex rel. Joseph* v. *Cannon*, notes 29 and 32 and accompanying text, *supra*.

[42] See, 5, U.S.C. § 7324.

[43] A Committee letter of Nov. 21, 1985, provided guidance concerning political activities of Members, officers, and employees of the House; it is included as an appendix to Chapter 8 of this manual.

[44] *Common Cause* v. *Bolger*, 574 F. Supp 672 (D.C. Cir., 1982), aff'd 461 U.S. 911 (1983).

[45] *United States* v. *Brewster*, 408 U.S. 501, at 512 (1972).

Congress. This distinction is specifically recognized in such measures as the franking law,[46] the tax treatment of political contributions,[47] the House rule on unofficial office accounts,[48] and in the Federal Election Campaign Act.[49]

Members may assume various public, political, and official roles in connection with their position in Congress. Thus, instances may occur where the "official/campaign" distinction is less clear than in others or where one may intrude into the other. As noted by the United States District Court in the franking case, *Common Cause* v. *Bolger (supra)*: "To state the obvious, it is simply impossible to draw and enforce a perfect line between the official and political business of Members of Congress."

Concern has been expressed over the potential, and arguably unavoidable, "overlap" or intrusion of some minimal campaign related activities into official operations when dealing with the practical, day-to-day realities of a Member's functioning office. In responding to "official" inquires from the press or inquires from constituents, for example, congressional staff may need to respond to issues that relate to a Member's political campaign, as well as his official duties. Similarly, scheduling assistance and information from the Member's official staff may be requested by the campaign staff to ensure that the Member's campaign schedule does not conflict with his official agenda. This Committee had recognized that it may not be possible to have an absolute separation of duties during the workday but that the "Committee expects Members of the House to abide by the general proposition" that staffers are to work on campaign-related matters during their "free time" after the completion of their official duties.[50]

In addition to congressional ethical standards and rulings, legal implications arise if salaries are claimed from public appropriations for individuals performing nonofficial, campaign services on behalf of a Member. Although the question of civil liability might not be justiciable under the provisions of the Federal False Claims Act,[51] criminal liability might be found where a scheme to compensate individuals from public moneys for campaign services is considered to constitute fraud against the government.[52] In this connection, the Department of Justice obtained a criminal indictment against a former Member of the House of Representatives charging that the individual, while in Congress, defrauded the United States by placing 11 persons on his congressional payroll to operate and staff various reelection campaign headquarters.[53] On February 13, 1979, the former Member pleaded guilty to mail fraud and tax evasion.

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[46] See, 39 U.S.C. § 3210(a)(1) and (2) compared to § 3210(a)(5)(A) and (C); see also, *Common Cause* v. *Bolger, supra*, as to discussion between official and campaign mailings.

[47] See, 26 U.S.C. §§ 527 and 162, Revenue Ruling 80-331, where funds received by a political committee are tax exempt when used for campaign purposes but are taxable income to a Member who converts contributions to official congressional uses (with an off-setting business deduction allowed to be taken).

[48] House Rule XLV; see also, H.R. Doc. 95-73, 95th Cong., 1st Sess., pp. 16-17.

[49] 2 U.S.C. § 439a; see also, *Buckley* v. *Valeo*, 424 U.S. 1, at 84, n. 112 (1976), where the Supreme Court characterizes 2 U.S.C. § 434(d) as a "reasonable accommodation" of the distinction "between the legitimate and necessary efforts of legislators to communicate with their constituents" on the one hand and "activities designed to win elections by legislators in their other role as politicians" on the other.

[50] See, Advisory Opinion, No. 2, *supra*.

[51] See, 31 U.S.C. §§ 3729; *United States ex rel. Joseph* v. *Cannon, supra*.

[52] See, *United States* v. *Clark, supra;* note also, *Joseph* v. *Cannon, supra*, at 1385, and *United States* v. *Diggs, supra*, at 997, where the court found a fraudulent scheme in using staff appropriations "for purposes other than those intended by the appropriation and duly certified by the congressman."

Employees of the Federal Government, including congressional staff, are prohibited from making political contributions to a Member of Congress or other Federal official who is the "employer or employing authority" of the contributor. Thus, as is discussed in detail in Chapter 8, a House employee may not make a contribution to his employing Member. However, "contribution" for this purpose does not include volunteer activity.[54]

House Staff Outside Employment Considerations. As with campaign activity, House employees who engage in private employment may not do so

—to the detriment of their congressional duties;
—on "official time" for which a salary is received from the United States Treasury, or
—if the employment benefits are gained through the improper use of their official positions.[55]

Neither may they use confidential information received in the course of their public employment "as a means for making private profit." [56] These standards, as well as certain other limitations on outside employment, are discussed more fully in Chapter 3.

Professional staff members of congressional committees are under restrictions, with respect to outside employment, that are generally similar to those of employees of House Members. However, each individual committee may determine additional restrictions on its staff's outside employment as necessary for the committee's efficient operation.[57] The discussion in Chapter 3 contains information on other limitations on outside employment pertinent to committee staff members.

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[53] *United States* v. *Clark, supra;* see, report on indictment, *Washington Post,* Sept. 6, 1978, p. A6.

[54] See, 18 U.S.C. § 603; 2 U.S.C. § 431(8).

[55] See, Regulations of the House Administration Committee, "Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives," Parts II(C)(2)(a) and II(b)(2)(a), Dec. 1980 ed.

[56] House Rule XLIII, cl. 3.

[57] See House Rule XI, cl. 6.

Appendix to Chapter 4

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT ADVISORY OPINION No. 2

Issued July 11, 1973

(On the Subject of a Member's Clerk Hire)

REASON FOR ISSUANCE

A number of requests have come to the Committee for advice on specific situations which to some degree, involves consideration of whether monies appropriated for Members' clerk hire are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Mambers.

BACKGROUND

The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that ". . . no definitive definition, was found . . . ". It is out of this absence of other guidance the Committee feels constrained to express its views.

Clerk-hire allowance for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing clerical assistance to a Representative "in the discharge of his official and representative duties . . .". The same phraseology is use today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of "official and representative duties" was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to "clerical service" or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

SUMMARY OPINION

This Committee is of the opinion that the funds appropriated for Members' clerk-hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his clerk hire allowance under either an express or tacit agreement that the salary to be paid him in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other non-representational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk-hire rolls of the House, it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

ALSO SEE THE NOVEMBER 21, 1985 COMMITTEE LETTER PROVIDING GUIDANCE CONCERNING POLITICAL ACTIVITIES OF MEMBERS, OFFICERS AND EMPLOYEES OF THE HOUSE, INCLUDED AS AN APPENDIX TO CHAPTER 8

Chapter 5. OFFICIAL ALLOWANCES AND LIMITATIONS

Highlights

Members, officers, and employees of the House of Representatives should note that

—allowances made available to a congressional office are for defraying only "official expenses;"

—official allowances may not be converted to personal use or applied to any nonofficial activity;

—only official allowances (appropriated funds) and Members' personal funds may be used to defray official expenses;

—the prohibition on unofficial office accounts bars the use of private funds or services from outside sources to defray official expenses;

—in addition to violations of the House rules, misuse of official allowances may subject Members or employees to criminal prosecution and actions to recover misspent funds.

Regulations of the Committee on House Administration, included in the *Congressional Handbook of the U.S. House of Representatives,* should be consulted for required certifications, documentation, and guidelines regarding the use of, and accounting for, allowances and expenses.

Chapter 5. OFFICIAL ALLOWANCES AND LIMITATIONS

Various allowances are authorized for Members of Congress to defray the expenses incurred in holding office. Statutory authorizations often note that such allowances are for expenses of an "official" or "strictly official" nature.[1] Regulations of the Committee on House Administration note that the official expense allowance for a Member's office is "to be used in support of the conduct of official and representational duties."[2]

The major legal and ethical problems that arise concerning official allowances, and the ones with which this manual generally deals, relate to the use of allowances for other than "official expenses," including the conversion of money or property to personal use. Related problems concern "double billing" (attempting to receive reimbursement more than once for the same expenses) and claiming reimbursement for nonexistent expenses.

General Allowance for Official Expenses. Committee on House Administration regulations state that the official expense allowance is to be used "to pay ordinary and necessary business expenses incurred by the Member (and/or the Member's employees) within the United States, its territories and possessions, in support of the conduct of the Member's official and representational duties to the district from which he/she was elected."[3] The allowance may not be used to defray any personal, political, or campaign-related expenses; nor may the Member, a relative of the Member, or anyone with whom the Member has a professional or legal relationship directly benefit from the expenditure of these funds. Members may be liable for misspent funds or expenditures exceeding the allowance provided.

The cited regulations provide examples of items for which this allowance may be used, as well as a list of prohibited expenditures. Included among the permissible uses are expenditures for travel, office equipment lease, district office lease, stationery, telecommunications, printing and production services, costs of audio/video recordings produced in the House Recording Studio, postage, computer services, and other official expenses.

Listed as *not* payable from the official expenses are the following:

(1) Expenses relating to the hiring and employment of individuals, such as employment service fees or relocation costs.

(2) Items purchased from other than the House stationery store which have a useful life in excess of the current term of

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[1] See, for example, 2 U.S.C. §§ 42c, 43b, 46g, 46g-1, 56, and 122a.

[2] "Regulations and Accounting Procedures for Allowances and Expenses of Members, Committees and Employees of the U.S. House of Representatives," Section II, Part I, para. A, at p. 2.1 of the *Congressional Handbook of the U.S. House of Representatives*, issued by the Committee on House Administration, Sept. 1985 (hereinafter cited according to *Congressional Handbook* page or section).

[3] *Congressional Handbook*, pp. 2.1 and 2.18.

the Member, and which have a residual value of more than $25 upon expiration of the current term of the Member.

(3) Holiday greeting cards, flowers, trophies, and awards.

(4) Personal advertisements (other than meeting or appearance notices).

(5) Payments for consultants or contract employees.

(6) Donations or gifts of any type, except flags of the United States flown over the Capitol and items purchased for use as gifts when on official travel for the House outside the United States.

(7) Dues or assessments other than to legislative support organizations approved by the Committee on House Administration.

(8) Purchases of radio and television time.

(9) Food or beverage costs, unless incidental to events which have as their primary purpose the discussion with non-staff individuals matters relating to the Member's official and representational duties, and only to the extent of $1,500 per session.

(10) Educational expenses for courses of study, information and training programs, unless the benefit accrues primarily to the House and the skill or knowledge is not commonly available.

(11) Parking for the Member or employees at district offices, except when included as an integral part of the lease or occupancy agreement.[4]

The allowance for official expenses may be used to pay dues or assessments to a legislative service organization (i.e., a caucus, committee, or similar group operated solely to provide legislative services or other assistance to Members in the performance of their official duties).[5] However, a legislative service organization "which receives contributions or any form of income, either direct or inkind, from any source other than the Members . . . shall not be located in space under control of the House and shall receive no other support from the House or from Members of the House via their allowances." [6] The Committee on House Administration certifies and publishes a list of legislative service organizations that satisfy the criteria established by the committee.[7]

False Claims, Fraud. Federal law provides that funds generally may be used only for the purposes for which appropriated.[8] When funds are used other than for their intended purposes, the misused funds may be recovered by the Government for repayment to the United States Treasury.

The use of official allowances for other than official purposes, including double billing and claims for nonexistent expenses, might subject a Member, officer, or employee to civil litigation under the False Claims Act.[9] Such a suit may be brought in the name of the United States by an individual citizen, with the potential for the Department of Justice's taking over the prosecution under the provisions of the act when false, fraudulent, or fictitious claims are allegedly made.[10]

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[4] *Id.*, pp. 2.18–2.62.

[5] Order of the Committee on House Administration, adopted Oct. 21, 1981, introductory paragraph. Legislative service organizations are discussed in greater detail in Chapter 10.

[6] *Id.*, para 4. Although Members may not use their official allowances to support legislative service organizations that are privately funded, such a caucus or similar group may (a) take advantage of educational intern, fellowship, or volunteer programs that are primarily of educational benefit to the participants or (b) distribute to Members research materials prepared by persons not employed by the legislative service organization if the source of the materials is disclosed. *Id.*, paras. 3, 8.

[7] *Id.*, para. 7.

[8] 31 U.S.C. § 1301(a).

Citizen suits under the False Claims Act are often unsuccessful on procedural grounds, since the suit will be dismissed if it is shown that the evidence upon which the suit was based was in the possession of the United States prior to the initiation of the suit.[11] Many of the law suits against Members of Congress for false claims, particularly those charging use of official staff for personal purposes, were apparently based on information from newspaper reports or other press revelations and have, therefore, been dismissed.[12] One suit, which alleged that a Senator authorized payment of the congressional salary of his administrative assistant while the aide worked on the Member's campaign, was dismissed on the ground that it presented a nonjusticiable political question, since no judicially discoverable standards exist for determining whether Senators may use congressional staff in their campaigns.[13]

In one case, however, the Department of Justice took over prosecution from the private plaintiff.[14] The Member of Congress was charged with false claims and unjust enrichment at the expense of the United States for allegedly submitting vouchers and receiving payments for trips that had not been taken and claiming reimbursements for one mode of transportation when another, less costly, means was actually used. The case was settled and the action dismissed when the Member agreed to repay a compromise figure. The Government has also initiated suits against Members subsequent to their criminal prosecution for the same or related conduct. One such suit was dismissed at the Department of Justice's motion because the former Member's financial situation would have made it impossible to execute any judgment.[15] In another action, the Government contended that a former Member had used, and permitted his family and friends to use, his official telephone credit card to charge personal calls.[16]

During the 99th Congress, this Committee undertook an inquiry into travel by a Member of the House on corporate aircraft. The Committee found that the Member had improperly accepted 21 free flights of official travel. Furthermore, with respect to 19 of these flights, the Member had sought and received reimbursement for automobile mileage for the same trips. Because the Member reimbursed, with interest, the corporation and the House for the flights and erroneously filed vouchers and because the Committee concluded that the Member apparently misunderstood the predicates to a proper voucher, no sanction was recommended.[17]

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[9] 31 U.S.C. § 3729.

[10] Under 31 U.S.C. § 3729, as amended by P.L. 99-562, a civil penalty between $5,000 and $10,000, *plus* 3 times the amount of damages that the government sustains, may be imposed for knowing violations.

[11] *Id.*

[12] See, *United States ex rel Thompson* v. *Hays*, 432 F.Supp. 253 (D.C. Cir., 1971); *United States ex rel Martin-Trigona* v. *Daley*, Civil Action No. 76-1164 (D.D.C.), dismissed.

[13] See, *United States ex rel Joseph* v. *Cannon*, 642 F.2d 1373, 1380 (D.C. Cir., 1981), *cert. den.* 455 U.S. 999 (1982).

[14] *United States ex rel Hollander* v. *Clay*, 420 F.Supp. 853 (D.D.C., 1976); see also, Committee print of the House Select Committee on Congressional Operations and the Senate Committee on Rules and Administration, 94th Cong., 2d Sess., "Identifying Court Proceedings and Actions of Vital Interest to Congress," final report, pp. 90–94.

[15] *United States* v. *Diggs*, Civ. No. 79-2148 (D.D.C., dismissed without prejudice Aug. 4, 1980).

[16] *United States* v. *Eilberg*, 536 F.Supp. 514 (E.D.Pa., 1982) and 553 F.Supp. 1 (D.D.C., 1981).

Committee on House Administration regulations specifically provide that allowances for official expenses "shall only be disbursed upon proper certification and documentation, for the official expenses incurred by the Member, the Member's employees, or in support of the operation of the Member's congressional office." [18] The regulations note that such documentation "shall include invoices, receipts, or other evidence of expenses incurred." [19] The use of money received for supplies or services secured for other than the official expenses certified by voucher may involve a fraud against the Government. The general false statements statute, 18 U.S.C. § 1001, prohibits the making of any false, fictitious, or fraudulent statements or using false writings, documents, or entries, concerning any matter within the jurisdiction of any agency or department of the United States. The Supreme Court has ruled that this section applies to false statements, writings, or other representations made to a disbursing officer of the House of Representatives in furtherance of a fraudulent scheme.[20] Such a scheme might possibly involve, for example, the use of an allowance or funds "for purposes other than those intended by the appropriation and duly certified by the Congressman." [21]

Other criminal provisions of the United States Code prohibit the making of false or fictitious claims upon the United States [22] and prohibit a conspiracy to defraud the Government or an agency by obtaining or aiding in obtaining the payment of false claims.[23] Criminal liability may be present in some situations if an officer or employee knowingly steals or "converts to his use or the use of another * * * any money, or thing of value of the United States," under the provisions of 18 U.S.C. § 641.

The regulations of the Committee on House Administration prescribe an accounting procedure designed to provide Members with a standard and uniform method for tracking authorized allowances and related expenses.[24] Instructions, illustrations, and procedures provide a reference for general management of official funds. The regulations also include information on the transferability of allowances among various accounts and categories of expenses.

At page 2.42 of the *Congressional Handbook*, for example, the regulations address travel entitlements that might accrue to a Member, officer, or employee as a result of having performed or arranged official travel. Whether in the form of free travel, mileage, travel discounts, coupons, memberships, or similar benefits, the entitlements must be either used only in support of official duties or forfeited. No personal use of such an entitlement is allowed.

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[17] House Report 99-470, 99th Cong., 2d Sess.

[18] *Congressional Handbook*, p. 2.19.

[19] *Id.*

[20] *United States* v. *Bramblett*, 348 U.S. 503 (1955); see, also, *United States ex rel Hollander* v. *Clay*, *supra*, n. 14.

[21] *United States* v. *Diggs*, 613 F.2d 988 (D.C. Cir., 1979), *cert. den.* 446 U.S. 982 (1980).

[22] 18 U.S.C. § 287.

[23] 18 U.S.C. § 286; see also, 18 U.S.C. § 371.

[24] *Congressional Handbook*, pp. 2.63–2.70.

Unofficial Office Accounts. Rule XLV of the House of Representatives prohibits what are deemed "unofficial office accounts." Thus, outside private donations, funds, campaign contributions, or in-kind goods or services may not be used to support the activities of, or pay the expenses of, a congressional office. Rather, only appropriated, or Members' personal funds may be used for such purposes.[25]

The intent of the rule against unofficial office accounts was, as explained by the House Commission on Administrative Review of the 95th Congress, to build a "wall" between private funds and official allowances. The recommendations of the Commission were substantially adopted on March 2, 1977, as revisions to the House rules on conduct (H. Res. 287, 95th Congress). The following justification was given for requiring that official expenses of a Member be paid exclusively from official, appropriated funds:

> The Commission strongly believes that private funds should be used only for politically related purposes. Official allowances should reflect the necessary cost of official expenses. Increasing official allowances . . . to eliminate reliance on private sources represents a small cost to the public for the benefits to be derived. To suggest otherwise would be to accept or condone the continuation of the present system which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expenses of Members of Congress.[26]

Thus, House Rule XLIII, clause 7, requires that a Member treat as campaign contributions all privately raised funds. Furthermore, House Rule XLIII, clause 6, requires that campaign funds may be used only for "bona fide campaign purposes." No specific definition of bona fide campaign purposes is provided by the rules or legislative history of the provision. What would be an official, as opposed to campaign, expense would depend on the particular facts of the situation.[27] During floor debate on adoption of the rule, it was noted, for example, that travel to a Member's home district might be considered a political expense for which private campaign funds could be used if the purpose of the trip was politically related.[28] Similarly, taking certain individuals to dinner, if it is determined to be a political meeting rather than one relating to official duties, could be paid from campaign accounts.[29]

In Advisory Opinion No. 6, issued September 14, 1982, this Committee noted that in the absence of any definition in either House Rule XLV or XLIII of "political" or "official" expenses, Members are free to use their own judgment in determining the nature of an expenditure. "However, [the] committee is of the opinion that once the Member makes his determination, he is bound by it. A single event cannot, for the purpose of the House rules, be treated as *both* political and official." [30] Therefore, the advisory opinion permitted a Member to designate a town meeting in areas newly added to his district as either a political (campaign) event or official (representational) one. But, by sending announcements of the meeting under the frank (which can be used only in the conduct of official business), the Member defined the event as official and, thus, could not use campaign or other private funds to conduct, promote, or advertise it without violating Rule XLV or Rule XLIII, clause 6.[31] However, no violation would occur if an individual or organization, such as a radio or TV station, without the Member's consent, expended funds to promote the previously announced town meeting.[32]

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[25] See also, 31 U.S.C. § 1342, prohibiting acceptance of voluntary services without specific authorization (augmentation of appropriations).

[26] House Document No. 95-73, 95th Congress, 1st Session, "Financial Ethics," Communication from the Chairman, House Commission on Administrative Review, Feb. 14, 1977, p. 18.

[27] See, 123 *Congressional Record* 5900, Mar. 2, 1977, comments by Representative Frenzel.

[28] *Id.*

[29] 123 *Congressional Record* 5908.

The legislative history of the unofficial office account prohibition indicates that the injunction against maintenance of an unofficial office account applies as well to accounts maintained for a Member's benefit even if such is not maintained for a Members' direct use; and extends also to "a process whereby funds are received or expended" as well as to the maintenance of an actual account or repository.[33]

In an interpretation of the unofficial office account prohibition, the House Select Committee on Ethics of the 95th Congress found that the private, in-kind contribution of goods or services for official purposes is prohibited under Rule XLV.[34] The Select Committee found, however, that the following would *not* violate Rule XLV:

—Services provided by federal, state, or local government agencies.

—The occasional use of privately owned space to meet with constituents, where no public accommodations are reasonably available.

—Intern or volunteer *programs* in a Member's office that are *primarily* of educational benefit to the intern, as opposed to primarily benefiting the Member or office, and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive, or disburse any private contributions for intern programs associated with their office.

Accounts comprised solely of funds collected from meeting participants and used exclusively to defray meeting costs are discussed in Chapter 10.

The *Final Report* of the Select Committee also notes that Rule XLV "is not intended in any way to restrict the Member's use of his personal funds." Thus, for example, Members may establish petty cash funds out of their personal moneys to pay for miscellaneous office expenses.[35]

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[30] Emphasis in the original.

[31] Committee on Standards of Official Conduct, Advisory Opinion No. 6, Sept. 14, 1982; the text appears in full at the conclusion of Chapter 8.

[32] *Id.*

[33] 123 *Congressional Record* 5941.

[34] House Select Committee on Ethics, Advisory Opinion No. 6, May 7, 1977; the text appears in full at the conclusion of this chapter.

[35] House Report 95-1837, 95th Cong., 2nd Sess., Final Report of the Select Committee on Ethics, p. 25.

The House rules also specifically prohibit sending under the Member's frank any mass mailings, such as newsletters or postal patron mail, that are not paid for exclusively from official funds (House Rule XLVI, clause 4). Thus, private funds may not be used to prepare, print, or distribute any material for a franked mass mailing (500 or more substantially identical pieces of mail). The Commission on Administrative Review believed it "necessary to make a clear separation between the public purpose and private interest in the use of the frank, and, therefore, private funds should not be used to [prepare or] print 'official documents.' " [36]

Appendix to Chapter 5

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 6

SUBJECT

Acceptance of in-kind services for official purposes.

REASON FOR ISSUANCE

The Select Committee has been asked whether House Rule XLV, which prohibits unofficial office accounts, extends to private contributions of *in-kind* services for official purposes.

BACKGROUND AND DISCUSSION

House Rule XLV provides that no funds may be paid into any unofficial office account subsequent to March 2, 1977, and that such accounts must be abolished by Janaury 3, 1978. The definition of an unofficial office account included in the new Rule focuses on the most common form, i.e., a privately subsidized account used to supplement official allowances.

The legislative history of Rule XLV refers to an unofficial office account as a fund, respository, or process whereby funds are received or expended. The reasons for adopting new Rule XLV, as presented in the Financial Ethics report of the Commission on Administrative Review (H. Doc. 95-73, February 14, 1977), emphasize that eliminating private support of the public's business should be the primary objective of a new Rule:

> The Commission strongly believes that private funds should be used only for politically-related purposes. Official allowances should reflect the necessary cost of official expenses. . . . To suggest otherwise would be to accept or condone the continuation of the present system [of unofficial office accounts] which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expenses of Members of Congress.

Although it is clear that acceptance of monetary contributions to sustain such accounts was perceived as conduct to be prohibited by the new Rule, questions have been raised concerning the application of Rule XLV to acceptance of certain in-kind services (e.g., office supplies and equipment, district office space, etc.) and whether such items will be treated differently than monetary contributions for purposes of the Rule XLV prohibition.

The Select Committee finds that no distinction can be made between in-kind and monetary contribution. Whether the private support alluded to in the Commission's report is in the form of a monetary contribution or in the form of an in-kind service is not relevant in view of the intended prohibition against the private financing of official business. Moreover, it can hardly be argued that donation of in-kind services is any less an infusion of private support for official business than is the donation of money.

At least two precedents for treating in-kind services as monetary contributions are found in regulations promulgated by the Federal Election Commission (FEC) and the Internal Revenue Service (IRS). Those regulations require the inclusion of in-kind donations as contributions to unoffical office accounts, thus confirming the Select Committee's understanding that money and in-kind contributions should be treated the same.

The FEC defines an "office account" (unofficial office account) as "an account established for the purpose of supporting the activities of a Federal or State officeholder which contains excess campaign funds . . ." (11 CFR 113.1b). Such excess campaign funds include contributions of "anything of value." Therefore, according to the FEC definition, unofficial office accounts may encompass in-kind services or resources.

Similarly, the IRS considers the donation of in-kind resources as a "contribution," applying the criterion of "anything of value." The IRS treats the contribution of in-kind services or resources used for official purposes as personal income to the Member, just as it treats contributions to unofficial office accounts.

In sum, the Select Committee finds that for purposes of applying Rule XLV, no logical distinction can be drawn between the private contribution of in-kind services and the private contribution of money, and that both perpetuate the very kind of unofficial office accounts and practices that are prohibited by House Rule XLV.

Equally clear, however, is that various in-kind services and functions provided by federal, state and local government agencies do not fall in the same category as private donations of money or in-kind services. Thus, the provision of office space or rooms for consituent meetings, etc., by a state or local government would not be prohibited by application of this Rule. Of course, the occasional use of privately owned meeting space where no other appropriate public accommodations are reasonably available for meeting constituents does not fall within the proscriptions of the new Rule.

Additionally, application of the Rule would not prohibit a Member from continued participation with various educational intern, fellowship or volunteer programs. Members have long recognized that there is an inherent educational and professional benefit in interns, fellows, and volunteers viewing first hand the Legislative Branch of government, and that there are compelling public policy considerations for encouraging such programs. There is nothing in the legislative history that suggests an intent to discontinue these programs, nor has there surfaced any evidence of abuses resulting from the infusion of private money into public business causing conflict of interest or other situations intended by Congress to be prohibited by the New Rule. The Select Committee believes these programs are of primary benefit to the persons involved and notes that interns, fellows, and volunteers are not on the payroll of the House, nor are they considered to be employees of the House of Representatives. Therefore, this interpretation of Rule XLV does not apply to intern programs, provided the internships are primarily for educational purposes and do not give undue advantage to special interest groups or others with a direct interest in legislation.

However, it is clear that a Member would be violating the intent and the spirit of House Rule XLV if he attempted to supplement his official allowance by raising, receiving, or disbursing contributions to hire or support interns in his office. Therefore, it follows that a Member and his staff are prohibited from personally raising, receiving, or disbursing contributions used to support an educational intern, fellowship, or volunteer program. This holding represents the only effective method for restricting the potential to collect and maintain, directly or indirectly, unofficial funds for supplementing staff assistance and the officially provided clerk-hire allowance.

SUMMARY OPINION

For purposes of House Rule XLV, the private contribution of in-kind services for official purposes is prohibited. However, Rule XLV does not apply to services provided by federal, state and local government agencies or to the occasional use of privately-owned meeting space where no public accommodations are reasonably available for meeting with constituents. Nor does Rule XLV apply to interns or volunteers in a Member's office, based on the understanding that such intern programs are primarily of educational benefit to the intern and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive or disburse any private contributions for intern programs associated with their offices.

Chapter 6. THE FRANKING PRIVILEGE

Highlights

A Member's frank is to be used to mail material relating only to the official duties, activities, and business of a congressional office.

The frank may be used for such items as

- —constituent mail relating to public issues;
- —press releases, newsletters, and questionnaires;
- —mail to other legislators or government bodies;
- —Federal publications, laws, regulations, and the *Congressional Record*.

The frank may *not* be used for such items as

- —political or personal mail matter,
- —holiday greeting cards or reports on a Member's family,
- —expression of condolences on a personal loss or congratulations on a personal achievement.

In addition, current policy of the Commission on Congressional Mailing Standards restricts the use of the frank for the solicitation of any funds.

A Member's frank may not be loaned to any person or organization other than official congressional committees as authorized in the franking law.

A Member's staff engaged in mailings should

- —be familiar with the franking regulations issued by the House Commission on Congressional Mailing Standards;
- —seek advice on questions of frankability of mail matter from the Commission on Congressional Mailing Standards;
- —submit a sample of proposed "postal patron" mail to the Commission on Congressional Mailing Standards for an advisory opinion;
- —observe restrictions on the timing, source of financing, number, and permissible geographical area covered concerning mass mailings and postal patron mailings.

Chapter 6. THE FRANKING PRIVILEGE

Use of the franking privilege is governed by Federal law at 39 U.S.C. § 3210, *et seq.* Members of Congress and certain officers of the House are authorized to send, as franked mail, material relating to the official business, duties, and activities of their office.[1] The term "frank" denotes the autograph or facsimile signature of a person authorized to transmit matter through the mail without prepayment of postage.[2]

Criminal penalties are provided in the United States Code for misuse of the franking privilege, that is, for using a franked envelope or endorsement to avoid paying postage on a private letter or package.[3] Additionally, a misuse of a Member's frank by a staff employee may be imputed to the Member.[4] This may result in a complaint against the Member and/or required payment of restitution to the Treasury for the cost of improper use of the franking privilege.[5]

Commission on Congressional Mailing Standards. A revision to the franking law passed in 1973 established the Commission on Congressional Mailing Standards (commonly known as the Franking Commission) in the House.[6] This Commission is available to staff for questions and consultation concerning the franking privilege and is authorized to give advisory opinions on the frankability of mail matter,[7] as well as to issue regulations and hear complaints on possible abuse of the franking privilege. The franking statute provides that no court may entertain a civil suit on abuses of the frank except as judicial review of the decisions of the Commission.[8]

The franking law and the Rules of the House of Representatives [9] require that before any "postal patron" mailing is made, a sample or description of the material to be mailed must be submitted to the Franking Commission for an advisory opinion on frankability. The Commission's regulations are available in booklet form and should be consulted by congressional employees involved in mailing material under the franking privilege. In addition to providing guidelines and requirements for franked mail, the booklet includes examples of permissible and impermissible items or mailings and summaries of the Commission's decisions and advisory opinions. The Commission suggests that each Member of the House

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[1] 39 U.S.C. § 3210(b)(1).

[2] 39 U.S.C. § 3201.

[3] 18 U.S.C. § 1719.

[4] Regulations on the Use of the Congressional Frank by Members of the House of Representatives, House Commission on Congressional Mailing Standards, Feb. 1984 (hereinafter referred to in this chapter as "Regulations"), Chapter 1, para. 8.

[5] Regulations, Chapter 2, para. 20.

[6] P.L. 93-191, § 5(a), 2 U.S.C. § 501(a).

[7] 2 U.S.C. § 501(d).

[8] 2 U.S.C. § 501(e).

[9] House Rule XLVI, cl. 3.

"assign a staff member familiar with the franking law and regulations to supervise preparation of the mailing so that obvious violations of the franking law are avoided before submitting the material for an advisory opinion." [10]

With concern to a staff member's responsibilities regarding a Member's franking privilege, the Commission has stated the following in its published regulations:

> The actual determination of whether or not to send a particular piece of mail under a Member's frank probably will be made by his staff who prepare his mail for delivery. An improper use of the frank by a staff member, ranging from an inadvertent mistake or a willful abuse on a single letter or a mass mailing, will be imputed to his Member, under most circumstances. To help avoid these violations of the franking law, with all of their resultant possible penalties and the reflections on the effective administration of his office, a Member should reasonably assure that his staff knows what kinds of mail are frankable by providing for the training and supervision of these employees and their familiarization with these regulations. Members should encourage their staff, especially in the case of mass mailing, to consult with and seek the advice of the commission to the greatest extent possible.[11]

Authorization to Use the Frank. In addition to the grant of the franking privilege to Members of Congress, House officers, and the House Legislative Counsel, the surviving spouse of a Member, if the Member dies during his term of office, is authorized to use the frank for up to 180 days following the Member's death.[12] Members of Congress and others who have been granted the franking privilege may use the frank, to close the official business of the congressional office, for 90 days following the date on which they leave office.[13]

Material relating to the official business of a House committee may be sent under the frank of the chairman, ranking minority member, or any other member of the committee, subcommittee, or congressional commission.[14] As noted in the regulations of the Franking Commission, the authorization to use the franking privilege of a Member extends to official committees created by Congress and made up exclusively of Members but does not extend to informal groups of Members, "whose business relates to political, party policy, or special interest or regional matters." [15]

The franking law specifically prohibits the loaning of a Member's frank to any group, organization, or person other than the official congressional committees noted above and the Republican conference or Democratic caucus of the House.[16] The regulations on the frank also note that providing a franked envelope to members of the public for return mail to a Member or committee of Congress is not authorized.[17]

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[10] Regulations, Chapter 3, para. 5.C.

[11] Regulations, Chapter 1, para. 8.

[12] 39 U.S.C. § 3218. If there is no surviving spouse, then a member of immediate family of the Member as designated by the Clerk of the House (as amended by P.L. 97-69).

[13] 39 U.S.C. § 3210(b)(3).

[14] Regulations, Chapter 1, para 4.

[15] *Id.*

[16] 39 U.S.C. § 3215.

General Standards of Frankability. The congressional franking privilege is available only for the transmittal of material that concerns " the official business, activities, and duties of the Congress," entailing all matters that "directly or indirectly pertain to the legislative process or to any congressional representative functions generally." [18] Material that is purely personal or political may not be sent under the frank.

The franking law and the regulations promulgated under it note that the usual customary newsletter, news release, or questionnaire relating to official activities or public issues may be sent under the franking privilege. The regulations of the Commission go into some detail on guidelines and requirements for the content of newsletters and news releases.

Following is a summary listing of those items noted in the franking statutes as examples of either frankable or nonfrankable mail matter.[19]

FRANKABLE MAIL MATTER

1. Mail to any person and to any government agency relating to matters and programs of public concern and Congressional actions (39 U.S.C. § 321(a)(3(A)).

2. Newsletters and press releases dealing with the impact of laws on governments and the public, official action of Members, discussions of proposed or pending legislation, and positions of Members on, and arguments for and against such matters (39 U.S.C. § 3210(a)(3(B)); see Regulations of Commission on Congressional Mailing Standards for examples of frankable and nonfrankable items in newsletters, guidelines on use of personal references to the Member, and pictures or sketches of Member in newsletters.

3. Questionnaires seeking public opinion (39 U.S.C. § 3210(a)(3)(C)).

4. Mail between a Member's various Congressional offices (39 U.S.C. § 3210(a)(3)(D)).

5. Mail to other Members of Congress and all other legislators (39 U.S.C. § 3210(a)(3)(E)).

6. Mail expressing congratulations to a person who achieved some public distinction (39 U.S.C. § 3210(a)(3)(F)).

7. Mail consisting of Federal regulations or other publications containing general information (39 U.S.C. § 3210(a)(3)(G)).

8. Mailing containing nonpartisan voter registration or election information (39 U.S.C. § 3210(a)(3)(H)).

9. Mail containing biographical material in Federal publications or in response to specific requests and not included in newsletters or other mass mailings (39 U.S.C. § 3210(a)(3)(I)).

10. Mail consisting of pictures in Federal publications or in response to a specific request therefore and, if in a newsletter, not of such size and frequency that would advertise the Member rather

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[17] Regulations, Chapter 1, para. 5.
[18] 39 U.S.C. § 3210(a)(2).
[19] See, House Report No. 93-98, 93d Cong., 1st Sess.

than illustrate the accompanyng text (39 U.S.C. § 3210(a)(3)(J)); see Regulations of Commission on Congressional Mailing Standards as to guidelines and requirements for pictures and sketches of Member in newsletters.

11. The *Congressional Record* (39 U.S.C. § 3212a).
12. Excerpts from the *Congressional Record*, if such material independently meets the test of frankability (39 U.S.C. § 3212(b)).
13. Mailgrams, if the contents meet the test of frankability (39 U.S.C. § 319).
14. Reprints, copies, reproductions, facsimiles, or recordings of frankable matter (39 U.S.C. § 3210(c)).
15. Public documents printed at the order of Congress (39 U.S.C. § 3211).
16. Seeds and agricultural reports (39 U.S.C. § 3213).

NONFRANKABLE MAIL MATTER

1. Mail matter containing laudatory and complimentary articles or texts concerning Members on a personal basis rather than based on official duties or activities of a Member (39 U.S.C. § 3210(a)(5)(A)).
2. Mail matter containing greetings from a Member's family unless it is a brief reference in otherwise frankable mail (39 U.S.C. § 3210(a)(5)(B)(i), as amended by P.L. 97-69).
3. Any card expressing holiday greetings (39 U.S.C. 3210(a)(5)(B)(iii)).
4. Mail matter containing reports of a Member or his family's activities other than in connection with official functions and activities of the Member (39 U.S.C. § 3210(a)(5)(B)(ii)).
5. Mail matter containing solicitations for political support for the sender or any person or party or a vote or financial assistance for any candidate (39 U.S.C. § 3210(a)(5)(C)); see Regulations of the Commission on Congressional Mailing Standards concerning references to upcoming campaigns, filings for reelection, expressions of gratitude for election, etc. as nonfrankable items in newsletter or news releases.
6. Mail matter that is purely personal to the sender or to any other person (39 U.S.C. § 3210(a)(4)).
7. Mail matter expressing condolences to a person who has suffered a loss or expressing congratulations on a personal distinction (P.L. 97-69, sec. 1).

In 1980, former 2 U.S.C. § 439b, which prohibited any solicitations under the frank, was repealed.[20] However, the Franking Commission has retained the policy against solicitations in its regulations.

Mass Mailings. Special requirements and regulations are applicable to franked mailings that are to be sent out in a mass mailing. The term "mass mailing" is defined to mean a mailing of 500 or more pieces that are substantially identical in content.[21]

The Rules of the House of Representatives and the franking law now require that the cost of preparing and printing a mass mailing may be defrayed only from appropriated funds.[22] House rules and the franking law also restrict the sending of franked mass mailings by a Member who is a candidate for a statewide office to only the area constituting the congressional district from which the Member was elected.[23]

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[20] P.L. 96-187, § 105(1).

[21] 39 U.S.C. § 3210(a)(5)(D).

The Rules of the House of Representatives and the franking law also prohibit the sending of any mass mailings under the frank during the 60 days immediately before any primary or general election in which the Member making the mailing is a candidate.[24]

Postal Patron Mail. Mass mailings are often sent out under a simplified form of address that is known as postal patron mail. When a postal patron mailing is made under the frank, such mailing may be sent only to the congressional district from which the Member was elected or into a congressional district that has been redistricted by a legislative body or by judicial decision, so long as some portion of the old district from which a Member was elected is included in the new district.[25]

A Member is also restricted in the amount of mail he may send under the frank with a postal patron form of address. The total number of pieces that may be franked in this form during a calendar year cannot exceed an amount equal to six times the number of addresses to which such mail may be delivered in the area from which the Member was elected.[26] Exceptions are made to this limit for notices of appearances or a scheduled itinerary of a Member in the district (but not appearances of staff employees only). Such notices or itineraries are not counted against a Member's limit for postal patron mailing.[27]

Finally, before a postal mailing is made, the House rules and the franking law require that a sample or description of the material to be mailed be submitted to the Commission for an advisory opinion and determination on frankability.[28]

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[22] House Rule XLVI, cl. 4; 39 U.S.C. § 3210(f); P.L. 97-69.

[23] House Rule XLVI, cl. 5; 39 U.S.C. § 3210(a)(6)(A)(ii); P.L. 97-69.

[24] House Rule XLVI, cl. 6; 39 U.S.C. § 3210(a)(6)(A)(i), (ii)(II), and (C). There is no indication of an intent by Congress to restrict, during this time period, Member communication in any other form or through any other medium.

[25] 39 U.S.C. § 3210(d)(1).

[26] House Rule XLVI, cl. 2; 39 U.S.C. § 3210(d)(5).

[27] *Id.*

[28] House Rule XLVI, cl. 3; 39 U.S.C. § 3210(d)(6)(A).

Chapter 7. FINANCIAL INTERESTS AND DISCLOSURE

Highlights

Financial investments and holdings of Members and employees of the House may raise ethical conflict of interest issues in the performance of official duties. Members and employees are not, however, required to divest assets upon entering their positions, nor are Members mandatorily disqualified from voting on issues affecting personal financial interests. Consequently, public financial disclosure serves as the major regulation and deterrent to financial conflicts of interest.

Specifically, as to financial interests, Members, officers, and certain employees

—must file personal Financial Disclosure Statements by May 15 of each year detailing specific financial information concerning themselves, their spouses, and dependent children;

—may establish "blind trusts" to which assets may be transferred to avoid conflicts of interest which may arise because of financial holdings;

—are prohibited from improperly using their official positions for personal gain.

A rule of the House concerning abstention from voting because of a direct personal or pecuniary interest in a matter might apply to the financial investments of a Member when the Member is affected as an individual rather than as a member of a class.

Chapter 7. FINANCIAL INTERESTS AND DISCLOSURE

The private financial interests and investment holdings of Members and employees of the House and their families may raise ethical conflict of interest issues in the performance of official duties. Circumstances may arise where Members of the House must act on legislation or staff employees must give opinions or assistance in committee concerning matters that directly affect their personal financial interests or holdings. A concern in these instances is that a breach of the "public trust" might occur, that is, that the personal financial interests of the Members or employees, rather than the interest of the general public or the Members' constituency, would influence their vote, opinion, or decision.

As discussed by the New York City Bar Association in its work entitled "Congress and the Public Trust:"

> The evil is not only the possibility or appearance of private gain from public office, but the risk that official decisions, whether consciously or otherwise, will be motivated by something other than the public's interest. The ultimate concern is bad government, which always means actual harm to the public.
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> * * * * *
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> The evil, then, is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests. The quality of specific results is immaterial. In this sense, conflict-of-interest regulation is true to the fiduciary principle. Like other fiduciaries, such as guardians, executors, lawyers, and agents, the public trustee has a duty to avoid private interests which cause even a risk that he will not be motivated solely by the interests of the beneficiaries of his trust.[1]

Federal statutes, regulations, and rules of the House do not specifically prohibit a Member or an employee of the House from holding a financial asset or interest that might "conflict" with or influence the performance of official duties. Even the House rule limiting the amount of income a Member may receive in a year is applicable only to "earned" income and not income from financial assets, investments, or other equity.[2] Certain House rules and ethical standards may apply in some instances, however, to some particular aspect of outside financial interests. Specifically, Members and employees of the House are prohibited from using their official position in the Congress for their own personal gain.[3]

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[1] *Congress and the Public Trust,* Report of the Association of the Bar of the City of New York Special Committee on Congressional Ethics, James C. Kirby, Jr., Executive Director, New York, 1970, pp. 38-39.

[2] House Rule XLVII.

Use of Office for Personal Gain. House Rule XLIII, clause 3, provides that a Member or an employee may not receive any compensation or allow any compensation to accrue "to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress." The practical effect of this rule would be to require examination of financial transactions and benefits received by a Member or an employee to determine if such person has "used his political influence, the influence of his position to make pecuniary gains." [4]

Members and employees of the House are further instructed by the Code of Ethics for Government Service never to "discriminate unfairly by the dispensing of special favors or privileges to anyone" nor to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." [5] Thus, as noted in Chapter 2, this provision would look to the relationship between the receipt of benefits from a private source and official duties or acts to detect any appearances of possible improprieties, undue influence, or breaches of the public trust.

This Committee in the 94th Congress found that the prohibition on the use of one's official position for personal gain was violated when a Member sought benefits from an organization after the Member, in his official capacity, had actively promoted the establishment of that organization. The Committee found with respect to the Member that "during the period of time [the Member] was active in promoting the establishment of a * * * Bank [on a military base] he approached * * * organizers of the Bank and inquired about the possibility of purchasing stock in the Bank" [6] whose establishment he had actively pursued in his official position. He subsequently purchased 2500 shares of the Bank's privately held stock. It was noted that "[i]f an opinion had been requested of this Committee in advance about the propriety of the investment, it would have been disapproved." [7] This misconduct constituted one charge against the Member reported by the Committee to the full House, which accepted the Committee's recommendations and reprimanded the Member.

The Committee further found violations of ethical principles forbidding the use of public office for private gain because the Member had sponsored narrow legislation to specifically deal with a personal financial interest:

> [The Member] sponsored legislation in 1961 to remove a reversionary interest and restrictions on the commercial development land * * * in which he had a personal financial interest by virtue of his stock ownership in two corpo-

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[3] House Rule XLIII, cl. 3; Code of Ethics for Government Service, 72 Stat, Part II, B 12, para. 5.

[4] 114 *Congressional Record* 8807, Apr. 3, 1968, comments by Representative Price.

[5] See, note 3, *supra*.

[6] House Report No. 94-1364, 94th Cong., 2d Sess., *In the Matter of a Complaint Against Representative Robert L. F. Sikes*, Report by the Committee on Standards of Official Conduct, pp. 3, 18-21.

[7] *Id.*, at p. 4.

> rations that held leasehold interests in such land, without disclosing such interest to Congress at any time during consideration of the legislation.
>
> The standard of ethical conduct that should be observed by Members of the House, as is expressed in the principle in the Code of Ethics for Government Service, and which prohibits conflicts of interest and the use of official position for any personal benefit, was not observed by [the Member] in sponsoring the legislation.[8]

During the 99th Congress, this Committee conducted a Preliminary Inquiry into a series of allegations that had been made regarding the financial transactions of a Member of the House, including one that the member had improperly exerted influence on a federal agency in order to obtain a personal benefit. In that case it was alleged that a House employee made calls to the chairman of the agency on behalf of the Member, who chaired the agency's authorizing committee in the House. No evidence was found directly linking the calls to the Member or that the expressions of interest either expedited or affected the outcome of the agency's deliberations. Consequently, the Committee believed it inappropriate to attribute improper action to the Member based solely on inference. Nevertheless, the Committee admonished all Members to "avoid situations in which even an inference might be drawn suggesting improper action." (*See,* House Report 100-46, "Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain," April 9, 1987, at pages 3 and 9, and 43.)

Other ethical or statutory restrictions relate to the use of confidential information received in the performance of one's official duties for the purpose of making private financial gains. The Code of Ethics for Government Service provides generally that a Member or employee should "[n]ever use any information coming to him confidentially in the performance of governmental duties as a means for making private profit."

Public Disclosure. The statutory provisions requiring annual personal financial disclosure by Members and certain employees relate directly to financial interests, investments, and assets.[9] Financial disclosure provisions were seen as the means to regulate and monitor possible conflicts of interest due to outside financial holdings after proposals for divestiture of potentially conflicting assets and mandatory disqualification of Members from voting were rejected as impractical or unreasonable.[10] It was believed that such disqualification would constitute an undesired disenfranchisement of a Member's entire constituency.[11] A Member may often have a community of interest with his constituency, may arguably have been elected because of, and to serve, such common interest, and thus would be ineffective in representing the real interests of his constituents if he were forced to be disqualified from voting on issues touching those matters of common interest. In some rare instances, the House rule pertaining to abstentions from voting where the Member is personally interested may apply.[12] Formulas for determining a disqualifying interest in a particular entity affected by legislation, however, are difficult to establish to any practical degree.

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[8] *Id.*, at pp. 3-4.

[9] Ethics in Government Act of 1978, as amended, 2 U.S.C. § 701, *et seq.*

[10] See, H. Doc. No. 95-73, 95th Cong., 1st Sess., "Financial Ethics," Communication from the Chairman, Commission on Administrative Review, pp. 9-10.

[11] *Id.* at p. 9.

Although it is apparent that potential conflicts of interest may exist between a Member's official duties and his personal financial interests, it is also recognized that Members of Congress will enter public service owning assets and having private investment interests like other citizens. Members of Congress should not be expected to "fully strip themselves of wordly goods." [13] Even a selective divestiture of potentially "conflicting" assets would raise problems in the legislative branch. Unlike many positions in the executive branch of government that are concerned with administration and regulation in a particular area, a Member of Congress must exercise judgment concerning legislation across the entire spectrum of business and economic endeavors. The wisdom of divestiture in general has been questioned in some quarters as likely to isolate or insulate a legislator from the personal and economic interests that his/her constituency, or society in general, has in governmental decisions and policy.[14]

Thus, public disclosure of assets, financial interests, and investments has been decided upon as the preferred method of regulating possible conflicts of interest of Members of the House and certain congressional staff. Public disclosure is intended to provide the information necessary to allow Members' constituencies to judge their official conduct as to possible financial conflicts with their private holdings and to permit identification of potential conflicts of employees. Review of a Member's financial conduct occurs as part of the political process. As stated by the House Commission on Administrative Review of the 95th Congress in recommending broader financial disclosure in lieu of other regulations on investment income:

> In the case of investment income, then, the Commission's belief is that potential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.[15]

Under the Ethics in Government Act, one method of avoiding conflict of interest is the creation of "blind trusts" by federal officials, including Members and employees of the House. The theory behind such blind trusts is that officials will place financial assets in the trust under the exclusive control of an independent trustee. Eventually, through the sale of existing assets and the acquisition of new ones, the identity of specific assets owned by the trust will be unknown to the official and will thus be eliminated as a factor in influencing official decision making.

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[12] House Rule VIII, cl. 1.

[13] *Congress and the Public Trust, supra,* at p. 47.

[14] See, for example, Wisconsin Statutes Annotated, § 19.45(1), 1983-84 Supplement.

[15] H. Doc. No. 95-73, *supra,* at p. 9.

Financial Disclosure Requirements. The annual financial disclosure by Members and employees of the House is presently required under the provisions of the Ethics in Government Act of 1978, signed into law on October 26, 1978, as Public Law 95-521, and amended by Public Laws 96-19 and 98-150. The House Commission on Administrative Review of the 95th Congress noted in recommending broader financial disclosure requirements:

> The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the integrity of government and to deter potential conflicts of interest.[16]

Basically, Members of and candidates to the House, House employees receiving a salary equal to a GS-16 or more, and at least one principal assistant to a Member, if no staff employee of that Member receives at least a GS-16 salary, must disclose certain outside compensation and business transactions in annual personal financial disclosure reports filed with the Clerk of the House by May 15 of each year.

The Financial Disclosure Statements are to contain information for the calendar year preceding the filing date, unless otherwise noted. In all instances, filers may disclose additional information or explanation at their discretion.

I. SPOUSE AND DEPENDENT INFORMATION

In general, the reporting individual is required to include financial information concerning his or her spouse or dependent children. However, in rare circumstances, where one or more financial interests of a spouse or dependent child meet the three standards listed below, such interests need not be disclosed. The three standards for exemption are:

(1) The item is the *sole* interest or responsibility of the spouse or dependent child, and the reporting individual has *no knowledge* of the item; *and*

(2) The item was not in any way, past or present, *derived* from the income, assets, or activities of the reporting individual; *and*

(3) The reporting individual *neither* derives, nor expects to derive, *any* financial or economic benefit from the item.

No financial information is required to be reported regarding a spouse living separate and apart from the covered individual when they intend to terminate the marriage.

Legislative employees newly coming under the provisions, and persons becoming candidates to Congress, need disclose information concerning their spouse and dependent children only as to income, financial holdings, and liabilities. (Sec. 102(d)(1).) [17]

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[16] H. Doc. No. 95-73, *supra*, at p. 6.

[17] Section numbers refer to the Ethics in Government Act of 1978, as codified at 2 U.S.C. § 701, *et seq.*

II. INCOME—EARNED AND UNEARNED

Earned income is represented by compensation from employment or personal efforts; such income when it exceeds $100 from any one source must be disclosed as to its source, type, and gross amount. In reporting honoraria, the date of receipt must be indicated. Amounts accepted for actual travel and subsistence expenses for the reporting individual and spouse, or aide, and amounts paid or incurred for any agent's fees or commissions need not be reported as income. Earned income by Members is limited to 30 percent of the aggregate congressional salary received in a calendar year. Earned income in excess of the limitation may be donated to any qualified charity described in 26 U.S.C. § 170(c). Any honorarium, or other earned income, assigned to a charity (in whole or part) should be disclosed. Income from current U.S. Government employment need not be reported. The source and type, but not the amount, of a spouse's earned income that exceeds $1,000 should be reported. Earned income of a dependent child need not be reported. (Sec. 102(a)(1)(A).)

Unearned income includes, but is not limited to, earnings derived from assets or investments such as interest, rents, and dividends. Unearned income must be disclosed by category of value when it exceeds $100 in value from any source during a calendar year. The unearned income of a spouse or dependent child must also be reported. The filer may use a computer printout or similar listing of assets or investments, if so desired. (Sec. 102(a)(1)(B).)

III. HOLDINGS

Stocks and bonds, real estate, savings accounts, and any other investment or property held for the production of income during the calendar year, including business interests, that had a fair market value exceeding $1,000 as of the end of the year, must be reported by category of value. In listing the category of value of any item where it is difficult to determine an approximate fair market value, any recognized indication of value may be used provided that the method of valuation is included on the disclosure statement. In House Report 100-46, "Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain," April 9, 1987, this Committee found that a Member of the House had utilized an improper methodology for reporting the value of certain real property on his Financial Disclosure Statements. The effect was the undervaluing, or not reporting at all, the magnitude of certain transactions and holdings. The undervaluation was clearly attributable to misapplication of advice provided by the former Staff Director of the House Select Committee on Ethics. The Member abandoned the improper methodology and his Financial Disclosure Statement for a subsequent year complied with longstanding instructions issued by the Committee. In order to have as complete and accurate a record as possible, however, the Committee, pursuant to authority of section 105(a) of the Ethics in Government Act, directed the Member to correct the deficiencies which had been noted.

In listing securities, the name of each company in which stock worth over $1,000 is held must be listed separately. In reporting real property holdings, a brief description of the property (such as number of acres and indication of any improvements) and its location should be included. A computer printout or similar listing that contains the information required may be used.

Except for assets held in a "qualified blind trust," the holdings of and income derived from a trust or other financial arrangement in which a beneficial interest in principal or income is held by the reporting individual, his spouse, or any dependent children must be disclosed.

Any deposits aggregating $5,000 or less in personal savings accounts as of the end of the year and any personal liability owed to the reporting individual by a relative need not be reported. A personal residence would not be reported unless any part of the residence produced rental income. The cash value of a life insurance policy need not be reported. The reporting individual need report only the category of the amount of income received by him, his spouse, or dependents from: (a) a trust that was not created directly by such individual, his spouse, or any dependent, and with respect to which such individual, his spouse, and dependents have no knowledge of the holdings or sources of income of the trust or (b) a "qualified blind trust," as defined in section 102(e)(3) of the Ethics in Government Act of 1978. Such a trust must be approved by the Committee on Standards of Official Conduct before it will be deemed a qualified blind trust under the act. The existence of such a trust must be indicated on the disclosure form.

IV. TRANSACTIONS

A brief description, the date, and category of value of any purchase, sale, or exchange during the calendar year, that exceeds $1,000 in real property, stocks, bonds, commodities futures, or other forms of securities must be disclosed by catergory of value. In disclosing transactions in real property or securities, the category of value to be reported is the total purchase or sales price and is not related to any capital gain or loss on the transaction. Whether the property was purchased, sold, or exchanged must be indicated. A computer printout containing the information required may be used. (Sec. 102(a)(4).)

Any purchase or sale of a personal residence and any transactions solely by and between the reporting individual, his spouse, or dependent children need not be reported.

V. LIABILITIES

All personal obligations aggregating over $10,000 owed to one creditor *at any time* during the calendar year, whether secured or not and regardless of the repayment terms or interest rates, must be listed. The identity of the liability should include the name of the individual or organization to which the liability is owed, and the amount disclosed should be the category of value of the largest amount owed during the calendar year. (Sec. 102(a)(4).)

While the Ethics in Government Act of 1978 does not specifically define the term "liability," it is generally understood to mean an obligation or debt that one is required to discharge. Thus, for example, a loan against equity in one's own life insurance policy, where the value of the policy is reduced by the amount borrowed and the policy holder is not legally obligated to repay the debt, need not be reported as a liability. Any contingent liability, such as that of a guarantor or endorser, or the liabilities of a business in which the reporting individual has an interest need not be listed.

Any mortgage secured by the personal residence of the reporting individual or spouse (including a second residence or vacation home) that is not held for the production of income or any loan secured by a personal motor vehicle or household furniture or appliances, provided such loan does not exceed the purchase price of the item, need not be reported. Additionally, debts owed to a relative need not be disclosed.

VI. GIFTS

The term "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor. House Rule XLIII, clause 4, prohibits acceptance of gifts aggregating $100 or more in value from any source having a "direct interest in legislation" before the Congress or from a foreign national. Thus, this disclosure requirement applies primarily to gifts from personal friends, constituents, and other individuals or groups that do not have a "direct interest in legislation."

The source and a brief description of gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source during the calendar year, and the source, a brief description, and value of all other gifts aggregating $100 or more in value received from any source during the calendar year, must be reported. (Sec. 102(a)(2)(A).)

Gifts from relatives, gifts of personal hospitality of an individual, and political campaign contributions need not be reported. Gifts with a value of $35 or less need not be aggregated towards the $100 or $250 disclosure thresholds. (Sec. 102(a)(2)(B).)

VII. REIMBURSEMENTS

"Reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those that are

(a) provided by the United States Government, the District of Columbia, or any state or political subdivision thereof;

(b) required to be reported by the reporting individual under section 7342 of Title 5, United States Code (the Foreign Gifts and Decorations Act); or

(c) required to be reported under section 304 of the Federal Election Campaign Act of 1971. (2 U.S.C. 434.)

The identity of the source and a brief description of reimbursements from any source aggregating $250 or more in the preceding year must be listed. (Sec. 102(a)(2)(C).) These include items such as travel expenses provided in connection with a speaking engagement or fact-finding event related to official duties, whether those expenses were reimbursed to the individual or paid directly by the sponsoring organization. Only a brief description of the itinerary and the nature of the expenses aggregating $250 or more in value received from any source during the calendar year is required rather than exact dollar figures.

VIII. POSITIONS

Covered individuals must report the identity of all positions held, up to the date of filing in the current year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution. The act does not require the disclosure of positions held in any religious, social, fraternal, or political entity or any position solely of an honorary nature. (Sec. 102(a)(6).)

IX. AGREEMENTS

Any agreements or arrangements concerning future employment, leave of absence during one's government service, continuation of payments from a private source, or continued participation in an employee benefit or welfare plan of a former private employer must be described as to the parties, dates, and terms by the reporting individual. (Sec. 102(a)(7).)

Newly covered legislative employees are to file the required information concerning only income, financial holdings, liabilities, positions held, and agreements for continuing compensation, benefits, or future employment. Reports filed by such persons as to income are to cover the filing year and the preceding calendar year, while reports on the other items are to be current up to a specific date no more than 31 days before the date of filing. (Sec. 102(b).)

Blind Trusts. As part of the general information required to be disclosed under the Ethics in Government Act of 1978, a Member or covered employee must generally identify and provide the required details concerning the specific assets and holdings of any trust benefiting himself, his spouse, or dependent children. (Sec. 102(e)(1).) The provisions of the act, however, provide two exceptions to this required disclosure of the assets and holdings within a trust benefiting a public official or his family. In the first instance, if a trust is created by someone other than the public official, his spouse, or children and the assets and holdings of that trust are not known to such persons, then only the income from that trust need be reported.

The second exemption to the required reporting of the holdings within a trust specifically allows Members, covered employees and most federal officials to establish what is called a "blind trust" to which assets and financial holdings may be transferred. Subsequent to the establishment of a blind trust, in accordance with the requirements of the act, only the category of income from the qualified blind trust and the overall category of value of the trust, and not the specific assets or holdings within the trust, would have to be reported by the covered official.

The Ethics in Government Act of 1978 sets out specific guidelines and detailed requirements concerning the creation and maintenance of blind trusts in order to ensure the unconditional control and independence of the trustee over all the assets in the trust, to prevent the acquisition of those assets that the official is specifically prohibited from holding under law or regulation, and to protect the "blind" nature of the trust by shielding the official from knowledge of the holdings in the trust. The Attorney General of the United States is authorized to enforce the provisions of the act concerning the wrongful disclosure of the assets of the blind trust by the trustee to a beneficiary and as to the knowing receipt or solicitation of information about the trust by a reporting individual.

The general principle behind the blind trust is to shield the official from knowledge of specific assets or holdings and thus to avoid potential conflicts of interest or undue influence that might arise because of particular financial interests. Assets and holdings that are originally transferred to the trust by the official, and which are thus known to the official, will still be considered financial interests of that official for purposes of any conflict of interest provision of Federal law until notice is given by the trustee that the asset has been disposed of or that the asset's value is less than $1,000. Only those assets subsequently acquired by the trustee for the trust would be really "blind" and thus exempt from general conflict of interest laws. In this manner, an official could not "hide" a known conflicting asset in the trust.

When an official is prohibited by law or regulation from owning specific assets, such assets may not be obtained by the trustee for the trust. This restriction relates to prohibitions on owning specific assets and was not intended to apply to general prohibitions on financial conflicts of interest that would unreasonably require a day-to-day knowledge of the trustee of the duties and activities of a public official to determine if a conflict arises.[18]

Summary of requirements of blind trusts. Following is a summary listing of the requirements for blind trusts as set out in the Ethics in Government Act of 1978. These provisions appear in the act at section 102(e) for legislative branch personnel and are codified at 2 U.S.C. § 702(e)(3).

THE TRUSTEE

The trustee of the trust must be a financial institution, an attorney, a certified public accountant, or a broker.

The trustee must be independent from, and not associated with, an interested party such that the trustee cannot be influenced or controlled by an interested party.

The trustee may not be a past or present employee of an organization affiliated with, a partner of, a relative of, or involved in any joint venture with an interested party.

The proposed trustee must be approved by the reporting individual's supervising ethics office, which is the Committee on Standards of Official Conduct in the case of Members, officers, and employees of the House.

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[18] Senate Report No. 95-639, 95th Cong., 2d Sess., "Blind Trusts," p. 18.

ASSETS

Any asset transferred to the trust must be free of any restriction as to its sale or transfer, unless specifically approved by the reporting individual's supervisory ethics office.

Any asset placed in a trust by an interested party will be considered a financial interest of the reporting individual for purposes of Federal conflict of interest regulations or laws, including 18 U.S.C. § 208, until disposed of by the trustee or until the value of such asset is less than $1,000.

The trust instrument must specifically provide that the trust will not contain any assets that an interested party is prohibited from holding under any law or regulation.

THE TRUST INSTRUMENT

The trust instrument must provide that the trustee will not consult or notify an interested party concerning management and control of the trust.

The trust instrument must provide that the trustee will notify the reporting individual when assets transferred to the trust are disposed of or when the value of such is less than $1,000.

The trust instrument must provide that the tax returns of the trust are to be prepared by the trustee and not disclosed to an interested party, other than summary information necessary for an interested party to complete personal tax returns.

The trust instrument must provide that an interested party will not receive any reports on holdings or sources of income except as to cash value, income or loss, and reports necessary for filing personal tax returns and financial disclosure statements. No such reports received may identify any asset or holding.

The trust instrument must provide that no communication between an interested party and the trustee concerning the trust will take place except for written communications relating to the general financial interests and needs of the interested parties; notification of the trustee of any new law or regulation that would prohibit any particular holding or asset in the trust; or directions to a trustee to sell all of a particular asset transferred to a trust because of a potential conflict of interest.

The trust instrument must provide that the interested party will make no effort to obtain information on the holdings of the trust.

A House Member's proposed trust instrument must be approved by the Committee on Standards of Official Conduct.

NOTIFICATION AND FILINGS

Within 30 days after a trust is approved, the reporting individual must file with his supervising ethics office a copy of the trust agreement and a list of the assets that were transferred to the trust.

The reporting individual must notify his supervising ethics office within 30 days after transferring an asset (other than cash) to an existing blind trust, as to the identity and category of value of the asset.

Within 30 days after dissolution of a trust, the reporting individual must notify his supervising ethics office of such dissolution and must file a list of the assets and their value at the time of dissolution.

When a trustee or an interested party makes any written communication to one another concerning the trust, a copy of such communication shall be filed by the person initiating it to the supervising ethics office of the reporting individual within 5 days of the date of the communication.

PROHIBITIONS AND ENFORCEMENT

A trustee may not knowingly or negligently disclose information to an interested party that may not be disclosed; acquire holdings prohibited by the trust agreement; solicit advice from an interested party concerning the trust when prohibited by law or the trust agreement; or fail to file any required document.

A reporting individual may not knowingly or negligently solicit or receive information concerning the holdings or transactions of the trust, other than that to which entitled under the act, and shall not fail to file any document as required.

The Attorney General is authorized to bring civil action against persons violating the prohibitions listed above.

EXISTING TRUSTS

Trusts existing before the passage of the Ethics in Government Act of 1978 may be considered blind trusts if the supervising ethics office finds that a good faith effort was made to establish a blind trust; if the trust instrument is amended, or an agreement is made in writing, to conform the trust to the statutory requirements and the trustee meets the qualifications; and if the trust instrument, list of assets and their value originally transferred to the trust, and a list of assets transferred and subsequently sold are filed and made available to the public.

Amendments To Financial Disclosure Statements. An amendment to an earlier Financial Disclosure Statement will be considered timely filed if it is submitted no later than the close of the year in which the original filing so affected was proffered.[19] There is, however, a caveat to this "close-of-year" approach. Specifically, an amendment will *not* be considered to be timely if there is *no* showing that such amendment was occasioned by either the prior unavailability of information or the inadvertent omission thereof. Thus, for example, so long as a filer wishes to amend within the appropriate period of prescribed "timeliness" and such amendments are not submitted as a result of, or in connection with, action by the Committee on Standards of Official Conduct that may have the effect of discrediting the quality of the initial filing(s), then such amendments will be deemed to be presumptively good faith revisions to the filings. In essence, an amendment should be submitted *only* as a result of the need to either clarify an earlier filing or to disclose information not known (or inadvertently omitted) at the time the original Financial Disclosure Statement was submitted.

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[19] See, "Revised Policy Regarding Amendments to Financial Disclosure Statements," Memorandum from the Committee on Standards of Official Conduct to All Members, Officers, and Employees of the U.S. House of Representatives, Apr. 23, 1986, included in full at the conclusion of this chapter.

This Committee has adopted a two-pronged test for determining whether an amendment is considered to be filed with a presumption of good faith: First, whether it is submitted within the appropriate amendment period (close-of-year) and second, a "circumstance" test addressing why the amendment is justified. In this latter regard, filers will be expected to submit with the amendment a brief statement on why the earlier Financial Disclosure Statement is being revised. Amendments meeting the two-pronged test will be accorded a rebuttable presumption of good faith and the Committee will have the burden to overcome such a presumption. Conversely, any amendment *not* satisfying both of the above-stated criteria will not be accorded the rebuttable presumption of good faith. In such a case, the *burden* will be on the *filer* to establish good faith. Previously filed Financial Disclosure Statements may be in need of revision; information regarding the need for, and hence appropriateness, of such amendment will be considered in relation to the rebuttable presumption of good faith.[20]

Voting on Matters of Personal Interest. As noted above, no provisions of statute or rule presently require the diverstiture of private assets or holdings by Members or employees of the House upon entering their official position. Since legislation considered by Congress affects such a broad spectrum of business and economic endeavors, a Member of the House may find himself voting on legislation that would have an impact upon a personal economic interest. This may arise, for example, in a bill authorizing appropriations for a project for which the government contract is held by a corporation in which the Member is a shareholder, or a bill providing federal guarantees for municipal securities when a Member is among those holding such securities. Such interests in legislation, however, have not been found under House precedents to be disqualifying interests under the rule of the House that instructs Members to vote on each question presented unless they have "a direct personal and pecuniary interest in the event of such question." [21] It has generally been found that "where legislation affected a class as distinct from individuals, a Member might vote." [22] In some cases, the rule might apply when legislation would affect one specific corporation, rather than a class of corporations or businesses. However, application of the disqualification rule is directory, rather than mandatory, in nature and one that Members are expected to apply for themselves.

The following explanation has been provided for House Rule VIII, clause 1:

> It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises; but it has been held that the disqualifying interest must be such as affects the Member directly, and

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[20] A grace period ending at the close of calendar year 1986 was provided in the previously cited memorandum for amending disclosure statements from all earlier years.

[21] House Rule VIII, cl. 1.

[22] See, *Hinds' Precedents of the House of Representatives* (hereinafter referred to as *Hinds'*), vol. V, § 5952, p. 504.

> not as one of a class. In a case where questions affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates. And while a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions.[23] [Cross references omitted.]

Thus, Members holding stock in national banks have been permitted to vote on legislation "providing a national currency and to establish free banking" since Members "do not have that interest separate and distinct from a class, and, within the meaning of the rule, distinct from the public interest;" [24] veterans in the House have properly voted on questions of pay and pensions in the military since such Members "did not enjoy the benefit arising from the legislation distinct and separate from thousands of men in the country who had held similar positions;" [25] the Speaker would not rule that a Member owning stocks in breweries or distilleries would be disqualified in voting on the proposed amendment to the Constitution concerning the prohibition on the manufacture and sale of liquor; [26] Members who were stockholders in or had interests in import businesses voted on a tariff bill affecting the import business since "the bill before us affects a very large class. . . . The Chair would be surprised if there were not hundreds of thousands of American citizens who were stockholders in these companies. . . ." [27]

Although the rule has been found not to apply when a Member is affected only as a member of a class rather than as an individual, some precedents in the House have indicated that the rule might apply if legislation affects only one specific corporation or business rather than a class or group of corporations or businesses. Thus, in the instance of the vote on the constitutional amendment concerning "prohibition," although the Speaker found that a Member interested in breweries or distilleries could vote because it affected a class of businesses, the Speaker specifically noted: "Now if there was a bill here affecting one institution, if you call it that, the Chair would be inclined to rule that a Member interested in it pecuniarily could not vote, but where it affects a whole class he can vote." [28] Similarly, in the instance where the Speaker ruled that Members with interests in import businesses could vote on a tariff bill, the Speaker noted that: "Certainly it would not be within the power of the Chair to deny a Member the right to vote except in the case where the legislation applied to one and only one corporation." [29] In the case of an amendment to a bill specifically relating to the Central Pacific Railroad, the Speaker of the House suggested that a stockholder Member should disqualify himself from voting, although a ruling disqualifying such Member was not made by the Chair:

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[23] *Jefferson's Manual and Rules of the House of Representatives*, 99th Cong., § 659 (hereinafter cited as *Jefferson's Manual*).

[24] *Hinds*, *supra*, at § 5952, pp. 503-504.

[25] *Id.*

[26] *Cannon's Precedents of the House of Representatives* (hereinafter referred to as *Cannon's*), § 3071.

[27] *Id;* at § 3072, p. 623.

[28] *Id.*, at § 3071, p. 621.

[29] *Id.*, at § 3072, p. 623.

> In this case if the gentleman from Massachusetts be a stockholder in the road the Chair would rule he had no right to vote. It differs from the case of national banks which has been brought up in several instances, in the fact that this is a single corporation, and is not of general interest held throughout the country by all classes of people in all communities. * * * But if a stockholder in a single railroad corporation, as in this case, has his vote challenged it would be the duty of the Chair to hold, if he is actually a stockholder of the road, that he has no right to vote. * * * The Chair so decides without any knowledge in this particular case. It is for the gentleman from Massachusetts whose delicacy the Chair knows and cheerfully recognizes to relieve the House from any embarrassment on that question.[30]

As noted by more recent applications of the rule, however, even where one corporation or entity is primarily affected by legislation, a Member's interest in such corporation or entity might not be found to be a disqualifying interest in the subject matter. In commenting on a subsequent application of the rule, the Committee on Standards of Official Conduct noted:

> House precedents establish the rule that "where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting." This principle was followed by the House as recently as December 2, 1975, when the question arose whether House Rule VIII(1) would disqualify Members holding New York City securities from voting on a bill to provide federal guarantees for these securities. Speaker Albert ruled that a point of order to disqualify Members holding such securities would not be sustained.[31]

The Committee further found that a Member's ownership of 1,000 shares of common stock in a defense contractor corporation, out of more than 4,550,000 shares outstanding, "was not, under House precedents, sufficient to disqualify him from voting on" an appropriations bill authorizing funds for a project which the corporation was under contract with the government to perform.[32]

Finally, the precedents within the House of Representatives have shown that the weight of authority "favors the idea that there is no authority in the House to deprive a Member of the right to vote"[33] and that "each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting."[34]

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[30] *Hinds', supra*, at § 5955, p. 506.

[31] House Report No. 95-1364, *supra*, at p. 15.

[32] *Id.*, at pp. 14-16.

[33] *Jefferson's Manual*, 99th Congress, § 658; see, *Hinds' supra*, at § 5956, p. 506.

[34] House Report No. 94-1364, *supra*, at pp. 15-16; see also, 121 *Congressional Record,?* 38135, Dec. 2, 1975.

As discussed in Chapter 3, dealing with outside employment and compensation, the Federal criminal statute that prohibits a Member of Congress from contracting with the Federal Government, or "holding or enjoying" any Federal contract,[35] does not apply to contracts with an incorporated company made for the general benefit of the corporation.[36] Thus, a Member of the House may be a stockholder in a corporation, apparently even a majority stockholder and head of a corporation, that has a government contract, and no violation of the statutory provision barring Members from enjoying federal contracts would arise.[37]

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[35] 18 U.S.C. §431.

[36] 18 U.S.C. §433.

[37] 33 Op. Atty. Gen. 44, Oct. 29, 1921; 39 Op. Atty. Gen. 165, May 19, 1938.

Appendices to Chapter 7

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT INTERPRETATIVE RULING NO. 1, DECEMBER 5, 1979

SUBJECT

Designation of principal assistants by Members of the House of Representatives for purposes of filing a Financial Disclosure Statement pursuant to the Ethics in Government Act of 1978 (2 U.S.C. 701–709).

DISCUSSION

The Ethics in Government Act applies financial disclosure requirements to each employee of the Legislative Branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule. Any Member who does not have an employee compensated at the GS–16 salary level is required to designate at least one principal assistant for purposes of the act. Any such individual who performs the duties of his or her position for more than 60 days in a calendar year must file a Financial Disclosure Statement by May 15 of the succeeding calendar year if the individual continues to be such an employee on that date. Thus, employees who otherwise meet the statutory filing requirements are exempted if they leave their position prior to the May 15 filing date.

The purpose of the requirement that certain Members designate a principal assistant is to ensure that at least one employee in each Member's office files a Financial Disclosure Statement (see H. Rept. 95–574, Select Committee on Ethics). Since the act has been amended to specifically exempt former employees from the filing requirements (Public Law 96–19), an interpretative ruling is necessary to implement the designation requirement in a manner consistent with the legislative intent.

The act is ambiguous concerning when a Member's obligation to designate a principal assistant takes effect, when that designation must occur, and if the designation requirement applicable to a Member may subsequently be nullified under certain circumstances. For example, it is unclear whether or not the designation requirement is applicable to a Member only during the preceding calendar year for purposes of the May 15 annual filing. The statute is also ambiguous as to whether or not the designation must precede the employee's period of service. This ambiguity concerning the designation of principal assistants is compounded by the provision exempting former employees. For example, it is unclear whether a principal assistant designated by a Member who subsequently hires a "GS–16 employee" would be required to file a disclosure statement on May 15 in addition to the GS–16 employee.

While most principal assistants will be designated by Members early in a calendar year for purposes of filing a disclosure statement in the succeeding year, there are many circumstances under which a covered employee might leave a Member's office prior to the May 15 filing date. Consequently, Members who do not have an employee required to file a disclosure statement on May 15 should have the authority under the statute to designate a principal assistant any time prior to May 15 for purposes of filing a financial disclosure statement by that date. Such an interpretation of the designation requirement would ensure that at least one employee in each Member's office will file a disclosure statement in each calendar year, consistent with the intent of the statute.

As stated above, an employee subject to the act is not required to file a disclosure statement unless the individual continues to be such an employee on May 15. Thus, an employee who is subject to the act by virtue of being compensated at the GS-16 salary level meets the statutory filing requirements if the individual continues to be compensated at that salary level on May 15, whether or not he or she continues to be employed in the same office. However, a principal assistant designated by a Member who does not have a GS-16 employee would be required to file a disclosure statement only if: (1) the individual continues to be employed by that Member on May 15; and (2) that Member does not have a GS-16 employee required to file a disclosure statement on or before May 15. Thus, any principal assistant, not a GS-16 employee, designated by a Member who subsequently has an employee compensated at the GS-16 salary level would not be required to file a disclosure statement if the GS-16 employee meets the statutory filing requirements on or before May 15 of the succeeding calendar year.

Any employee designated as a principal assistant need not report information with respect to gifts and reimbursements received in a period when the individual was not designated as a principal assistant for purposes of the act. This interpretation is consistent with the statutory provision exempting gifts and reimbursements received when the reporting individual was not a government employee, since the individual may not have kept records of such items.

A further interpretative issue concerns the application of the designation requirement to Members serving their first term, and the circumstances under which a new employee designated as a principal assistant would be required to file the abbreviated disclosure statement applicable to new employees. If a first-term Member does not hire a new employee compensated at the GS-16 salary level, there would be no employee of that Member required to file a disclosure statement for a period of almost 17 months. Again, the intent of the statute is that at least one employee in each Member's office files a disclosure statement in each calendar year. Accordingly, any Member first taking office on January 3 who does not have a GS-16 employee required to file a disclosure statement on or before May 15 of that calendar year should designate at least one principal assistant to file a disclosure statement by that date. Any such designated principal assistant would be required to file a financial disclosure statement (Form B) as a new employee, even though the individual may previously have been employed in the Legislative Branch.

SUMMARY RULING

The committee issues the following interpretative ruling concerning the designation of principal assistants under the requirements of the Ethics in Government Act. The purpose of this ruling is to ensure that at least one employee in each Member's office files a disclosure statement, consistent with the intent of the designation requirement. The ruling is based on two specific provisions of the statute: (1) at least one principal assistant must be designated by each Member who does not have an employee compensated at a rate equal to or in excess of the GS–16 salary level; and (2) an employee in a position subject to the act is required to file a financial disclosure statement for the preceding calendar year only if he or she continues in that position on May 15 of the succeeding calendar year.

> Any Member who does not or will not have an employee required to file a financial disclosure statement on or before May 15 in a calendar year must designate at least one principal assistant to file a disclosure statement by that date. The designation of a principal assistant may occur anytime prior to the May 15 filing date. Any such designated principal assistant must meet the statutory filing requirements on May 15: (1) the individual performed the duties of his or her position for that Member for more than 60 days in the preceding calendar year; and (2) the individual continues to be a principal assistant to that Member on May 15.
>
> Any new employee designated as a principal assistant in accordance with this ruling by a Member first taking office on January 3 must file the financial disclosure statement required of new employees on or before May 15 of that calendar year.
>
> Any employee designated as a principal assistant need not report information with respect to gifts and reimbursements received in a period when the individual was not designated as a principal assistant for purposes of the act.

This interpretative ruling takes effect immediately upon adoption by the committee. Effective May 16, 1980, Members required to designate a principal assistant pursuant to the statute and this ruling must do so in accordance with procedures established by the committee.

POLICY REGARDING AMENDMENTS TO FINANCIAL DISCLOSURE STATEMENTS, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT MEMORANDUM, APRIL 23, 1986

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC.

To: All Members, Officers, and Employees of the U.S. House of Representatives.
From: Committee on Standards of Official Conduct.
Subject: Revised Policy Regarding Amendments to Financial Disclosure Statements.
Date: April 23, 1986.

The purpose of this letter is to inform all Members, officers, and employees who are required to file Financial Disclosure (FD) Statements pursuant to the Ethics in Government Act (EIGA) of 1978, 2 U.S.C. § 701, *et seq.,* whose filings are under the jurisdiction of this Committee, of a revision to this Committee's policy regarding the submission of amendments to earlier filed disclosure statements. The new policy, discussed below, will be implemented immediately and all future statements as well as the amendments thereto will be handled in accordance therewith.

To date, it has been the general policy of this Committee to accept amended FD Statements from all filers and consider such amendments to have been timely filed without regard to the duration of time between the date of the original filing and the amendment submitted thereto. Over time, this practice has resulted in the Committee having received a significant number of amendments to disclosure statements under circumstances not necessarily reflecting adequate justification or explanation that the amendment was necessary to clarify previously disclosed information or that a disclosure was omitted due either to unavailability of information or inadvertence. Moreover, and particularly in the case of an individual whose conduct (having EIGA implications) is under review, the Committee has been faced with the somewhat inconsistent tasks of identifying deficiencies in earlier FD Statements while simultaneously accepting amendments to such statements that may well have been intended to have a mitigating or even exculpating effect. Quite clearly, both time and experience have established the need to make some adjustments to the financial disclosure process in order to alleviate such perceived problems and create a more logical and predictable environment for filers to meet their statutory obligation under EIGA and the parallel responsibility of this Committee to implement that law. It is in this context that a new policy for accepting and considering amended disclosure statements is being implemented.

To begin, effective immediately, an amendment to an earlier FD Statement will be considered timely filed if it is submitted by no later than the close of the year in which the original filing so affected was proffered. There will be, however, a further caveat to this "close-of-year" approach. Specifically, an amendment will not be considered to be timely if the submission thereof is clearly intended to "paper over" an earlier mis/non filing or there is no showing that such amendment was occasioned by either the prior unavailability of information or the inadvertent omission thereof. Thus, for example, so long as a filer wishes to amend within the appropriate period of prescribed "timeliness" and such amendments are not submitted as a result of, or in connection with, action by this Committee that may have the effect of discrediting the quality of the initial filing(s), then such amendments will be deemed to be presumptively good faith revisions to the filings. In essence, the amendment, *per se*, should be submitted only as a result of the need to either clarify an earlier filing or to disclose information not known (or inadvertently omitted) at the time the original FD was submitted. In sum, the Committee will adopt a two-pronged test for determining whether an amendment is considered to be filed with a presumption of good faith: First, whether it is submitted within the appropriate amendment period (close-of-year); and second, a "circumstance" test addressing why the amendment is justified. In this latter regard, filers will be expected to submit with the amendment a brief statement on why the earlier FD is being revised. Thus, amendments meeting the two-pronged test will be accorded a rebuttable presumption of good faith and this Committee will have the burden to overcome such a presumption. Conversely, any amendment not satisfying both of the above-stated criteria will not be accorded the rebuttable presumption of good faith. In such a case, the burden will be on the filer to establish such a presumption.

The Committee is well aware that disclosure statements filed in years past may be in need of revision. To this end, the Committee has determined that a grace period ending at the close of calendar year 1986 will be granted during which time all filers may amend any previously submitted FD Statements. Again, while an amendment may be timely from the standpoint of when it is submitted—i.e., within the current year—information regarding the need for and, hence, appropriateness of the amendment will also be considered *vis-a-vis* the rebuttable presumption of good faith.

In sum, the effect of the new policy is to establish a practice of receiving and anticipating that FD Statements and amendments thereto will be submitted within the same calendar year and that departures based on either timeliness or circumstances can be readily identified for scrutiny and possible Committee action. As noted, implementation of the new policy will effect not only statements filed this year but also all statements filed in prior years in light of the grace period being adopted.

Should you have a question regarding this matter, please feel free to contact the Committee staff at 225-7103.

JULIAN C. DIXON,
Chairman.
FLOYD D. SPENCE,
Ranking Minority Member.

Chapter 8. CAMPAIGN FUNDS AND PRACTICES

Highlights

Members of the House, as do all candidates, must abide by the provisions of the Federal Election Campaign Act concerning required record keeping, reporting, registration, and organization.

With concern to the receipt of campaign contributions, Members and employees should note the numerous restrictions under Federal campaign laws, such as prohibitions on

—corporate, labor union, foreign national, and Government contractor contributions;
—soliciting contributions from Federal employees;
—cash contributions over $100;
—misrepresenting oneself as working on behalf of a particular candidate or circulating anonymous campaign literature;
—failing to report contributions received or expenditures made.

Concerning the use of campaign funds, rules and regulations provide that

—campaign funds may not be converted to personal use or used for official expenses;
—campaign funds may be used only for *bona fide* campaign purposes;
—funds received in testimonials or other fund raisers are to be treated as campaign funds;
—a Member may not use official resources, including funds, supplies, and equipment, for campaign activity.

With concern to participation by House employees in political campaign activity, Members and employees should note that

—employees of the House are not covered by the "Hatch Act" and may engage in general partisan campaign activity on their free time;
—employees may not make political contributions to a Member of Congress who is the employer or employing authority of the contributor;
—Members of Congress are prohibited from soliciting political contributions from their staff, as well as from other Federal employees.

Members and supervisory employees should counsel their staff as to the requirements and restrictions pertaining to political activities. Appropriate management controls should be implemented to ensure compliance with applicable standards.

Chapter 8. CAMPAIGN FUNDS AND PRACTICES

Members of the House of Representatives are subject to numerous restrictions concerning the use of campaign funds, in addition to regulations on campaign finance generally applicable to all candidates for federal office pursuant to the Federal Election Campaign Act of 1971, as amended.[1] Under the provisions of that act, the Federal Election Commission (FEC) has been established as an independent regulatory agency to oversee Federal campaign finance procedures and practices. The provisions of the Federal Election Campaign Act, regulations promulgated by the FEC,[2] and explanatory publications prepared by the FEC should be examined closely by Members of the House. Members and employees should also be aware of provisions of the Federal criminal code pertinent to campaign activities.

This chapter will briefly highlight the major provisions of the large body of Federal campaign law relating to registration and disclosure, as well as restrictions on campaign contributions. Advisory opinions interpreting specific provisions of the law may be requested from the FEC. This chapter will deal largely with those provisions not specifically under the authority of the FEC, including restrictions in the House rules, such as those on the use of campaign funds, criminal code provisions, and other ethical or conduct issues, such as the use of official resources for campaign or political purposes. The ability of House employees to engage in campaign activity is addressed in detail in Chapter 4 of this manual.

Members and supervising employees should carefully counsel all House staff as to the requirements and restrictions pertaining to political activities. The distinction between official and campaign responsibilities should be made clear, and the importance of exercising proper judgment should be emphasized. Management controls, such as time and attendance records, should be implemented to permit adequate supervision of both Washington and district staff and to document compliance with applicable standards.

General Campaign Finance Requirements. Under the Federal Election Campaign Act (FECA), a Member of the House who is a candidate for Federal office must designate a political committee to serve as his principal campaign committee.[3] Such committee, as is generally the case for all other political committees, must register with the FEC[4] and be organized and keep reccords according to

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[1] 2 U.S.C. § 431, *et seq.*

[2] Title 11 of the Code of Federal Regulations.

[3] 2 U.S.C. § 432(e); Federal Election Commission Regulations (hereinafter cited according to 11 CFR provision), sec. 101.1; note that even if action is not taken to qualify under state law, an individual is deemed a candidate under the FECA once $5,000 has been raised or spent towards election (2 U.S.C. § 431(2); 11 CFR § 100.3).

[4] 2 U.S.C. §433; 11 CFR Part 102.

Federal campaign laws.[5] Each candidate must also designate one or more national or state banks or similar, government-insured financial institutions, as a campaign depository.[6]

The campaign committees of candidates for the House must file periodic, detailed reports, on forms provided by the FEC, to the Clerk of the House as custodian for the FEC, concerning the receipt of political contributions and the making of political expenditures.[7] They must also file copies of such statements with the Secretary of State, or similar state officer, of the appropriate state.[8]

Restrictions on Receipt of Contributions. Members of and candidates for Congress are prohibited under Federal campaign laws from receiving political contributions from the treasury funds of a corporation, labor organization, or national bank.[9] Additionally, contributions may not be accepted from persons who are Federal government contractors.[10] Such corporations, labor organizations, membership organizations, or cooperatives may, however, even if holding a government contract, establish separate segregated funds, often referred to as political action committees, or "PACs." Voluntary contributions, not solicited by threats of job discrimination or reprisals or by dues or assessments required as a condition of employment, may be made to these PACs.[11] The PACs may then make political expenditures and contributions. Members and candidates for the House may receive contributions from them, up to contribution limits specified by Federal law.

Federal law restricts the amount of political contributions that may be made by, and accepted from, individuals and political committees. "Multicandidate" political committees—which are registered for 6 months with the FEC, receive contributions from 50 or more people, and contribute to at least 5 Federal candidates—may contribute up to $5,000 to a candidate for every primary, runoff, or general election in which the candidate is involved (and may contribute up to $5,000 to other political committees during a calendar year and up to $15,000 to national political party committees).[12] The PACs of corporations and labor unions are often multicandidate committees and thus may frequently make contributions of up to $5,000 per election. If a political committee is not a qualified multicandidate committee, it may make contributions of up to only $1,000 per election to a candidate.[13] Pursuant to 2 U.S.C. § 438(a)(6), the FEC maintains a list, updated monthly, of committees that have qualified as multicandidate.

The amount of contributions that may be made by, or received from, individuals is restricted to $1,000 to any candidate for each primary, runoff, or general election. Individuals are further limited to $5,000 per year in making contributions to any other political committee, $20,000 per year to national political party committees, and $25,000 in total contributions in a calendar year.[14]

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[5] 2 U.S.C. §432(a)–(d); 11 CFR Part 102.

[6] 2 U.S.C. §436(b); 11 CFR Part 103.

[7] 2 U.S.C. §§ 434, 436; 11 CFR Parts 104–105.

[8] 2 U.S.C. § 439; 11 CFR Part 108.

[9] 2 U.S.C. § 441bb; 11 CFR Part 114.

[10] 2 U.S.C. § 441c 11 CFR Part 115

[11] 2 U.S.C. § 441b(b)(2); 441c(b); 11 CFR §§ 114.5, 115.3.

[12] 2 U.S.C. § 441a(a)(2); 11 CFR § 110.2.

[13] 2 U.S.C. § 441a(a)(1); 11 CFR § 110.1.

[14] *Id.*, and 2 U.S.C. § 441a(a)(3); 11 C.F.R. § 110.5.

Political contributions are also specifically prohibited from foreign nationals not lawfully admitted to the United States for permanent residence,[15] from public utility holding companies,[16] and from one person in the name of another.[17] The making or acceptance of cash contributions over $100 is also prohibited.[18]

Political Contributions From Government Employees. Members of Congress, candidates for Congress, and Federal employees are specifically prohibited by provisions of Federal criminal law from soliciting political contributions from Federal government employees, including employees of the House of Representatives.[19] Unlike the statute prior to its 1980 amendment, the current provision prohibits only the solicitation of political contributions from Federal employees and does not prohibit the receipt of such contributions.[20] As discussed below, however, Members and employees should take note of restrictions under 18 U.S.C. § 607 on the solicitation and receipt of contributions in any building where Federal employees work, including House office buildings and Members' district offices, and under 18 U.S.C § 603, which prohibits employees from contributing to their employing authority.

The statute at 18 U.S.C. § 602 prohibits "knowing" solicitation of political contributions from any other Federal employee or officer. Inadvertent solicitations of Federal employees, therefore, such as when part of a general fundraising campaign aimed at the public at large, was not intended to be a violation of this provision or its predecessor.[21] As stated in the House Report on the Federal Election Campaign Act Amendments revising section 602:

> In order for a solicitation to be a violation of this section, it must be actually known that the person who is being solicited is a federal employee. Merely mailing to a list will no doubt contain names of federal employees [and] is not a violation of this section.[22]

In the 99th Congress, this Committee undertook a Preliminary Inquiry into allegations that Federal law had been violated in connection with political solicitations from congressional staff in House office buildings.[23] At issue was a "Dear Colleague" letter advertising a political fundraising event and urging the involvement of the staff of recipient Members. The Committee noted that the provisions of law in question, 18 U.S.C. §§ 602 and 607, were "designed to address *coercive* activities—that is, political 'shakedowns'—directed at Federal employees" and that "the solicitations did not involve the type of offensive activity intended to be prevented."[24] The Committee also noted that the letter had been prepared by a contractor without the Members' either being aware of or approving the substance of the solicitation. However, the review did point up "the need for any organization involved in political fundraising efforts to institute such procedural safeguards as are necessary to avoid any question that it is acting in accordance with those laws governing political solicitations."[25]

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[15] 2 U.S.C. § 441e; 11 C.F.R. § 110.4(a).

[16] 15 U.S.C. § 79(L).

[17] 2 U.S.C. § 441(f); 11 C.F.R. § 110.4(b).

[18] 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c).

[19] 18 U.S.C. § 602, as amended by P.L. 96-187, Jan. 8, 1980; political activities of Members, officers, and employees of the House are the subject of a memorandum from this Committee dated Nov. 21, 1985, included in full at the conclusion of this chapter.

[20] See, House Report, 96-422, 96th Cong., 1st Sess., p. 25. Under the former statute, Members of Congress were also prohibited from *receiving* contributions from Federal employees, including their staff, even when no solicitation of the contribution was shown; see, *Brehm* v. *United States*, 196 F.2d 769 (D.C. Cir., 1952), *cert. den.* 344 U.S. 838 (1952), upholding the conviction of a Member of Congress for receiving campaign contributions from staff even without specific finding of solicitation or shakedown (at 770).

[21] See, 113 *Congressional Record*, p. 25703, Sept. 11, 1973.

[22] House Report No. 96-422, *supra*, at p. 25.

[23] House Report No. 99-277, 99th Cong., 1st Sess., "Investigation of Alleged Improper Political Solicitation."

Since the statute is directed to protecting employees who, because of their employment and position, may be subject to coercion or "political assessment," section 602 "does not apply to solicitation of Members of Congress."[26] This interpretation is consistent with the construction of the predecessor statute to 18 U.S.C. § 602 that, as noted in a resolution adopted by the House in the 63rd Congress, 2d Session (1913), "should not be construed to prohibit one Senator or Member of Congress from soliciting campaign contributions from another Senator or Member of Congress."[27]

Political Contributions by House Employees. Employees of the Federal Government are prohibited from making political contributions to a Member of Congress or another Federal official who is the employer or employing authority of the contributor.[28] Prior to an amendment effective in 1980,[29] congressional staff and other employees of the Federal Government had been prohibited from making political contributions to any other Federal officer, employee, or Member of Congress, regardless of the employment relation of the parties.[30] Although in practice the statute was not strictly enforced,[31] such a restriction on employees had been in effect in some form since the late 1800's.[32]

Under current 18 U.S.C. § 603, congressional employees are prohibited only from making political contributions to their "boss," that is, their employer or employing authority. As explained in the House Report accompanying H.R. 5010, 96th Congress:

> Section 603 has been amended to allow voluntary contributions from federal employees to other federal employees. If, however, the individual is employed by a Senator, Representative, or Delegate or Resident Commissioner to Congress that employee cannot contribute to his or her employer although voluntary contributions to other Members of Congress would be allowed. An individual employed by

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[24] *Id.*, at p. 4; emphasis in the original.

[25] *Id.*, at p. 5. While House Report No. 99-277 contains the Committee's views on the statute's operation, decisions on whether to seek prosecution are within the province of the Department of Justice.

[26] 125 *Congressional Record* 36754, Dec. 18, 1979.

[27] See, Cannon's Precedents of the House of Representatives, Vol. VI, § 401, pp. 571-573.

[28] 18 U.S.C. §603.

[29] P.L. 96-187.

[30] See, 18 U.S.C. §607, 1976 Code Ed.; see, Senate Report No. 95-500, 95th Cong., 1st Sess., Report of the Committee on Rules and Administration, "Review of Laws Related to Contributions Made by or Solicited from Senate Officers and Employees."

[31] Letter from Henry E. Peterson, Assistant Attorney General, Criminal Division, by Thomas J. McTiernan, Chief of the Fraud Section, United States Department of Justice, Aug. 12, 1974.

[32] Section 14 of the Pendleton Act, 22 Stat. 403; similar restrictions on some Federal employees making political contributions to other employees, and receiving such contributions from other employees, have been upheld against constitutional challenge; see, *Ex Parte Curtis*, 106 U.S. 371 (1882), and *United States* v. *Wurzbach*, 280 U.S. 396 (1930).

a congressional committee cannot contribute to the chairman of that particular committee. If the individual is employed by the minority that individual cannot contribute to the ranking minority member of the committee or the chairman of the committee.[33]

In addition to permissible contributions by congressional staff to a candidate, including a Member of Congress who is not the employer or employing authority of the staffer, congressional employees may contribute to a committee or organization that is not the "authorized committee" or campaign committee of the candidate. Generally, under Federal campaign law, a multicandidate committee or a PAC, which supports more than one Federal candidate, may not be designated as an "authorized committee" of a candidate.[34] Therefore, congressional staff may make political contributions to multicandidate political committees such as the Democratic or Republican Senatorial or Congressional Campaign Committees, the Republican or Democratic National Committees, or other PACs, even though some of the proceeds received by such committees may eventually be expended for the benefit of the contributor's employer. In making such contributions, however, employees should not specifically earmark the contribution for use only for the campaign of their employer, since that may be considered a contribution directly from the employee to the Member.[35]

For the purposes of current restrictions on contributions by congressional employees, the term "contribution" is defined as in 2 U.S.C. § 431, the Federal Election Campaign Act, as amended. Specifically *excluded* from the term "contribution" is the value of voluntary services by an individual provided a candidate or committee. Thus, staff may *voluntarily* provide services on their own free time to their employing Member's campaign. In addition, the definition of "contribution" pertains only to Federal election campaigns, so a congressional employee may make a political contribution to any officer or employee of the Federal Government for purposes of influencing the election or defeat of a candidate for State or local office.

Fundraising dinners, testimonials, and similar events are common methods for candidates to raise money for an upcoming political campaign or pay off previous campaign debts. The money paid for a ticket to such an event is generally considered under Federal law as a campaign contribution from the purchaser of the ticket to the candidate on whose behalf the event is being held.[36] Thus, a congressional employee should not purchase such a ticket or contribute money to a fund raiser or testimonial given for his employer or employing authority.

An employee could attend a fund raiser as a nonpaying guest without violating provisions against making political contributions to one's employer. Furthermore, congressional staff may also volunteer their own free time to work on an event, since voluntary services are not considered "contributions" under Federal campaign law.

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[33] House Report No. 96-422, 96th Cong., 1st Sess., p. 26.

[34] 2 U.S.C. § 432(e)(3).

[35] See, 11 C.F.R. § 110.6.

[36] See, 2 U.S.C. § 434 and House Report No. 96-422, *supra*, at p. 16; see, also, IRS Ruling 74-412 (TIR 1191), 1972-2 CB; also House Rule XLIII, cl. 7.

Use of Campaign Funds. Federal law at 2 U.S.C. § 439a provides generally that campaign funds may be used to defray the expenses of holding a Federal office and specifically prohibits the use of such funds for personal purposes only by persons who were not Members of Congress on January 8, 1980. However, the rules of the House place greater restrictions on the use of campaign funds by all Members of the House. The rules require that campaign funds be used solely for campaign purposes and specifically prohibits the use of campaign funds for personal[37] or official purposes.[38] Campaign funds also may not be used for defraying the cost of preparing or printing of any mail material to be sent in a mass mailing under the Member's frank.[39] Additionally, any proceeds from testimonials or other fundraising events are to be treated by Members as campaign contributions subject to the restrictions discussed above.[40]

Nonincumbent candidates for the House are governed only by 2 U.S.C. § 439a, since they are not subject to the House rules. That statute was amended in the 96th Congress to prohibit nonincumbent candidates from using campaign funds for personal purposes, similar to the restriction on Members by House rule. In addition to the statutory and rule restrictions on diversion of campaign funds to personal use, it should be noted that such diversion may result in an additional income tax liability for that individual since such funds would generally be considered personal "income" to such person.[41]

Bona fide campaign purpose. Members of the House are instructed by House Rule XLIII, clause 6, to keep campaign funds separate from personal funds; to convert no campaign funds to personal use in excess of reimbursements for legitimate and verifiable prior campaign expenses; and to expend no campaign funds not attributable to *bona fide* campaign purposes. This clause of the Code of Official Conduct was amended to read in its present form on March 2, 1977, by House Resolution 287, 95th Congress.

As discussed in the House debate preceding adoption of House Resolution 287, no specific definition of "*bona fide* campaign purpose" is provided in the rules. What would be considered an appropriate or legitimate political or campaign expense would depend on the facts of a specific situation:

> We sought to make no strict definition of political expenses. What is political is a matter of fact rather than definition. We believe that if a Member travels home for a political purpose, and it is covered by his volunteer committee out of political accounts, that this is a political expense.
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> However, what we have tried to do is to confine expenses from political accounts or volunteer committee ac-

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[37] House Rule XLIII, cl. 6.
[38] House Rule XLV.
[39] House Rule XLVI, cl. 4.
[40] House Rule XLIII, cl. 7.
[41] I.R.S. Proc. 68-19 (1968); Revenue Ruling 74-23 (1973).

> counts to expenses that are political. By and large, that definition will be left up to the Member and to his volunteer committee, and as it is broadly defined under the election law.[42]

The Committee provided guidance to Members on the scope and intent of Rule XLIII, clause 6, in connection with a Preliminary Inquiry conducted in the 99th Congress.[43] Under Federal Election Commission regulations at 11 C.F.R. § 103.3, political committees, including a candidate's campaign committee, may invest its funds. However, the Committee found that the rule had been violated when a Member borrowed money from his own campaign. "[W]hen a candidate borrows money from his own campaign, a presumption is raised that [the] candidate is receiving a personal benefit—i.e., use of the money."[44] While such a presumption could be overcome, the Committee took the position that any use of campaign funds personally benefiting the Member, rather than "exclusively and solely" benefiting the campaign, is *not* a *bona fide* campaign purpose:

> Moreover, a bona fide campaign purpose is not established merely because the use of campaign money might result in a campaign benefit as an incident to benefits personally realized by the recipient of such funds, such as where . . . the individual has the discretion of whether to share benefits he might realize from the use of campaign money.
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> . . . [T]he Committee believes that any other interpretation and application of the third prohibition of Rule XLIII, clause 6, would open the door to a potentially wide range of abuse and could result in situations where campaign moneys were expended for the personal enjoyment, entertainment, or economic well-being of an individual without any clear nexus that the funds so expended achieved any political benefit to the disburser (campaign organization) of the funds.[45]

Rule XLIII, clause 6, was used as the basis for four counts of financial misconduct against a Member who was eventually censured by the House in the 96th Congress.[46] This Committee, in recommending censure by the House, noted that for a charge of conversion of campaign funds to personal use to be sustained "it must be proved that the expenditures were not for reimbursement for legitimate prior campaign expenditures, and that the funds were in fact applied to personal use." In the instance in question, the Committee concluded "that these transfers [from campaign accounts to office accounts to personal accounts with the Sergeant at Arms] were made to repay personal loans [of the Member] and to cover outstanding obligations against his personal checking account at the Sergeant at Arms." [47]

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[42] *Congressional Record*, Mar. 2, 1977, H1581 (daily ed.), comments by Representative Frenzel.

[43] House Report No. 99-933, 99th Cong., 2d Sess., *Investigation of Financial Transactions of Representative James Weaver With His Campaign Organization*, Sept. 30, 1986.

[44] *Id.*, at p. 13.

[45] *Id.*, emphasis in the original.

[46] 126 *Congressional Record* 13801-13820, June 10, 1980.

No official use. The 1977 amendments to the Rules of the House made by H. Res. 287, 95th Congress, specially intended to build a "wall between campaign funds and official allowances." [48] Thus, the Rules of the House, in addition to requiring that campaign funds be used only for campaign purposes and prohibiting conversion of campaign funds to personal use, have established a specific prohibition against the maintenance or use by a Member of an "unofficial office account," that is, the use of nonappropriated, private funds such as campaign contributions to defray official expenses of the Member.[49]

The recommendations of the Commission on Administrative Review, substantially adopted by the House, set forth reasons for requiring that official expenses be paid exclusively from appropriated funds:

> The Commission strongly believes that private funds should be used only for politically related purposes. Official allowances should reflect the necessary cost of official expenses. Increasing official allowances . . . to eliminate reliance on private sources represents a small cost to the public for the benefits to be derived. To suggest otherwise would be to accept or condone the continuation of the present system which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expenses of Members of Congress.[50]

As noted earlier, House rules provide no specific definition of those expenses that would be considered "political," as opposed to official. In the debate preceding adoption of the rule, it was noted that the facts of a specific situation control: "What is political is a matter of fact rather than of definition. "[51] Examples were noted in the debate that a Member's travel to his district might be considered a political expense if the purpose of the trip were campaign related [52] and that taking certain individuals out to dinner, if such were a political meeting, could be reimbursed or paid from campaign accounts.[53]

The Select Committee on Ethics of the 95th Congress, in its *Final Report,* discussed the intent of the rule restricting the use of campaign funds and possible "political" purposes for which campaign funds might legitimately be used under the rule:

> The intent of this rule is to restrict the use of campaign funds to politically-related activities and thus to prohibit their conversion to personal use or to supplement official allowances. The rule should not be interpreted to limit the

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[47] House Report No. 96-930, 96th Cong., 2d Sess., *In the Matter of Representative Charles H. Wilson,* May 8, 1980, p. 6.

[48] H. Doc. No. 95-73, 95th Cong., 1st Sess., "Financial Ethics," Communication from the Chairman, House Commission on Administrative Review, Feb. 14, 1977, p. 18.

[49] House Rule XLV.

[50] H. Doc. No. 95-73, *supra,* at p. 18.

[51] 123 *Congressional Record* 5900, Mar. 2, 1977.

[52] *Id.*

[53] 123 *Congressional Record* 5908.

> use of campaign funds strictly to a Member's reelection campaign.
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> The Federal Election Commission and the Internal Revenue Service define political expenditures as a payment or gift of anything of value made for the purpose of influencing the selection, nomination, or election of an individual to public office. However, the FEC and IRS have interpreted this definition broadly to encompass the traditional politically-related activities of Members of Congress. Thus, if a Member determines, for example, that advertisements in publications of civic organizations, the mailing of holiday greetings to constituents, or travel to meetings with local party officials, would constitute a political expenditure, as so defined, or are otherwise politically-related, then he may use campaign funds for that purpose. Any such political expenditures must be fully disclosed in accordance with the reporting requirements of the FEC Act.[54]

In Advisory Opinion No. 6, issued September 14, 1982, this Committee noted that in the absence of any definition in Rule XLV or Rule XLIII of "political" or "official" expenses, a Member is free to use his own judgment in designating a particular expenditure as political or official. "However, [the] committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official." Therefore, in the situation that prompted the issuance of the advisory opinion, the Member was free to designate a town meeting in his district and in areas newly added to the district by reapportionment as either a political (campaign) event or as an official (representative) one. But by sending announcements of the town meeting under the frank (which can be used only in the conduct of official business), the Member defined the event as an official one and thus could not use campaign funds or any other private funds to conduct, promote, or advertise the event without violating Rule XLV or Rule XLIII, clause 6.[55]

Franking. Federal law now provides that only appropriated funds, and not private contributions, may be used to pay the cost of preparing, printing, and distributing mass mailings under the frank.[56] This statutory provision, enacted in 1981, codified provisions that had been in the Rules of the House since 1977.[57]

The rationale behind the restriction on the use of campaign funds, or other private funds, for defraying the cost of mass mailings under the frank was explained by the House Commission on Administrative Review:

> The Commission believes that since the franking privilege is reserved for "official materials," it is inappropriate

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[54] House Report No. 95-1837, 95th Cong., 2d Sess., Final Report of the Select Committee on Ethics, p. 16.

[55] Committee on Standards of Official Conduct, Advisory Opinion No. 6, Sept. 14, 1982. The full text appears at the conclusion of this chapter.

[56] 39 U.S.C. § 3210(f); P.L. 97-69, § 4.

[57] House Rule XLVI, cl. 4.

> for franked mass mailings to be printed and prepared with private or political funds.
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> The Commission believes that it is necessary to make a clear separation between the public purpose and private interest in the use of the frank, and therefore, private funds should not be used to print "official documents." [58]

Testimonials and fund raisers. The Rules of the House now provide that any funds received from testimonial dinners or other fundraising events are to be treated as campaign contributions, subject to all the restrictions on campaign funds.[59] Thus, such proceeds may be used only for *bona fide* campaign purposes, rather than for personal or offical office uses.

The Select Committee on Ethics found in an Advisory Opinion that a direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fundraising event" for purposes of House Rule XLIII, clause 7, and thus proceeds from such a solicitation must be treated as campaign contributions that may not be converted to personal use by the Member. Finding such, the Select Committee noted that a major purpose of the revisions of the Code of Official Conduct was to prevent Members from cashing in on their official position in the Congress.[60]

The Select Committee on Ethics also found, in Advisory Opinion No. 11, May 11, 1977, that a Member may not accept proceeds for his unrestricted personal use from a fund raiser conducted by a group that is independent from the Member.[61]

Legal defense funds. Money received from fund raisers, and other campaign funds, may be used by a Member of the House for the Member's legal defense of court actions arising from his election to or his holding of Federal office.[62] This Committee has concluded that the use of such funds would be considered campaign related. However, the money raised for such a legal defense fund would still be considered campaign contributions under the House rules and would thus be subject to all the reporting requirements and limitations on contributions applicable to campaign funds generally. Thus, Members could not receive contributions to a campaign committee legal defense fund from corporations, labor unions, national banks, public utility holding companies, foreign nationals, Government contractors, or anonymously, among other restrictions on campaign contributions. The Committee has permitted Members to raise funds for legal defense in certain instances which are subject to the gift rule (House Rule XLIII, clause 4), rather than campaign restrictions. Individuals comtemplating establishment of any fund to pay for legal defense are urged to first contact the Committee for guidance.

Excess Campaign Funds. Campaign funds that are in excess of amounts needed to defray the cost of campaigning are under the same restrictions as campaign funds in general. Thus, although Federal law provides generally that excess campaign funds may be used to defray the expenses of running a congressional office, among other lawful purposes, Members of the House would be prohibited from taking such action.

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[58] H. Doc. No. 95-73, *supra*, at p. 19.

[59] House Rule XLIII, cl. 7.

[60] Advisory Opinion No. 4, Apr. 6, 1977, included in House Report No. 95-1837, *supra*, p. 61; the full text appears at the conclusion of this chapter.

[61] *Id.*, at p. 76, the full text is included at the conclusion of this chapter.

[62] *Id.*, at p. 15.

The statutory provision at 2 U.S.C. § 439a was amended in the 96th Congress to prohibit the use of excess campaign funds for personal purposes by anyone if the candidate involved was not a Member of Congress on January 8, 1980, the date the amendment became effective. However, because House rules prohibit such diversion to personal use, current Members, even those who were Members on January 8, 1980, are unable to make personal use of campaign funds as long as they remain in office.[63]

As noted by the Federal Election Commission in an advisory opinion, the statute by itself would allow the following:

> Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes expressly made lawful: The funds may be used to defray any ordinary and necessary expenses incurred in connection with a candidate's duties as a Federal office holder; they may be contributed to any organization which is exempt from Federal taxation under 26 U.S.C. § 501(c); they may be contributed without limitation to any national, state, or local committee of a political party; or they may be used for "any other lawful purpose." Such funds may not be converted by any person to any personal use if the candidate involved was not a Member of Congress on January 8, 1980. See 2 U.S.C. § 439a and 11 C.F.R. 113.2.
>
> The Commission's regulations provide that surplus funds from a prior campaign committee may be transferred to a current campaign committee of the same individual provided none of the funds transferred contain contributions which would be in violation of the Act. 11 C.F.R. 110.3 (a)(2)(iv).[64]

Although the more restrictive House rules do *not* allow for the official or personal use of campaign funds and permit only political expenditures from such funds, under the provisions of both the Federal statute and House rules, excess campaign funds may be invested for use in a future political campaign. In addition to the general reporting requirements concerning the disposition of campaign funds, the political committee may be liable for tax on the interest earned on campaign funds.[65] The Select Committee on Ethics stated in its *Final Report* that House rules also would not bar the use of excess campaign funds for making contributions to any charitable organization described in section 170(c) of the Internal Revenue Code or to a political party or another candidate, as permitted by FEC regulations.[66]

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[63] See, Federal Election Commission Advisory Opinion 1978-94, Dec. 15, 1978, as to the use of excess campaign funds of a deceased Member of Congress. Permissibility of converting campaign funds for personal purposes in such cases would now depend on whether the deceased Member had been in Congress on Jan. 8, 1980; see also, FEC Advisory Opinion 1980-41.

[64] FEC Advisory Opinion No. 1980-113, Nov. 7, 1980, p. 2.

[65] See, Internal Revenue Service Form 1120-POL, "U.S. Income Tax Return for Certain Political Organizations," with instructions.

Political Use of Congressional Resources. Staff employees of the House are compensated from funds of the Treasury for regular performance of official duties. They are not paid for engaging in unofficial, campaign activities on behalf of a Member. In the words of the United States District Court for the District of Columbia: "It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection."[67]

As noted in Chapter 4, however, congressional employees do not come within the "Hatch Act."[68] Once employees have completed the official duties assigned, they are free to engage in campaign activities on their own time, not using official resources. Additionally, employees may engage in campaign activities while on annual leave, leave of absence, or in part-time employment status, provided the time spent on both official and campaign activities is carefully documented.

Committee on House Administration regulations specify that the various allowances for a Member's office are for "official expenses" and for the "conduct of the official and representational duties of the office."[69] The regulations derive in large part from 31 U.S.C. § 1301a, providing that funds are to be used only for the purposes for which appropriated, as well as from statutory authorizations for allowances.[70] It is thus inappropriate to use any official resources to conduct or engage in campaign or political activities. Mailing lists procured, compiled, maintained, or produced with appropriated funds may be used only to support the conduct of official duties. No name or address from any such list may be affixed to a campaign or other mailing not bearing the Member's frank.

Members must regularly certify that all official funds have been properly applied. Not only may a false certification bring criminal penalties, but any amount improperly paid may be recovered by the Government.[71]

There may, of course, be some debate as to what "official" congressional duties entail. Potentially, some arguably unavoidable "overlap," or intrusion, of some minimal campaign-related activities into official operations may occur. In responding to "official" inquiries from the press or constituents, for example, congressional staffers may need to address questions that relate to a Member's political campaign. Similarly, scheduling assistance and information from the official staff may be requested by the campaign staff to ensure that no conflict occurs between the Member's campaign schedule and official agenda. Committee on Standards of Official Conduct Advisory Opinion No. 2[72] recognized that, as a practical matter, it may be impossible to have an absolute separation of duties. However, the general distinction between official representational and legislative duties on the one hand and political activities on the other is a long-standing distinction in Congress, recognized specifically in such provisions as the franking law, the rule on unofficial office accounts, and the Federal Election Campaign Act.

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[66] House Report No. 95-1837, *supra*, at pp. 16–17.

[67] *Common Cause* v. *Bolger*, 574 F.Supp. 672 (D.C. Cir., 1982), *aff'd* 461 U.S. 911 (1983).

[68] See, 5 U.S.C. § 7324.

[69] See, *Congressional Handbook of the U.S. House of Representatives*, prepared by the Committee on House Administration, Sept. 1985, especially pp. 2.1 and 3.1.

[70] See, e.g., 2 U.S.C. §§ 42c, 43b, 46g, 56, and 122.

[71] 18 U.S.C. § 1001 provides a criminal penalty for submitting a false statement to the Government; the "False Claims Act," 31 U.S.C. §§ 3729–3731, permits assessment of a penalty of up to three times the amount wrongly claimed.

[72] Committee on Standards of Official Conduct, Advisory Opinion No. 2, July 11, 1973; the full text appears at the conclusion of Chapter 2.

Campaign Activity in a Federal Building. When Members or employees become involved in campaign financing activities, an important consideration is a criminal code provision now at 18 U.S.C. § 607, which makes it unlawful to solicit or receive any political contribution in any building where Federal employees work. The Capitol, House office buildings, and district offices are covered by the prohibition. Rules of the House Office Building Commission also specifically prohibit the soliciting of contributions in any House facility.[73]

The statute was amended in 1980 to recognize that it is often unavoidable that unsolicited campaign contributions will be received through the mail or a supporter will unexpectedly tender a contribution in person within a congressional office. When this situation occurs, section 607(b) specifically provides that the contribution may be accepted by congressional staff, provided it is forwarded within seven days to the appropriate campaign organization. When any advance indication is given that a campaign contribution may be tendered in a House office building, such action should be discouraged and the donor directed to the Member's authorized campaign committee.

The focus of the prohibition is the *location* of the person solicited, rather than the location from which the solicitation originated. As noted by the Supreme Court in interpreting the forerunner to section 607, "the solicitation was in the place where the letter was received." [74] Other provisions of the United States Code, as well as regulations governing House allowances, specify that amounts provided from appropriated funds for telephone, mail, office space, stationery, etc. are to be used only for "official" purposes. These provisions effectively preclude origination of a solicitation from an official facility.

List of Prohibited Campaign Activities. Following is a brief listing of specific statutory prohibitions relating to campaign activities by a Member or employee of the House. This list provides a quick reference to activities that should raise so-called "red flags" as far as Federal statutory law is concerned.

A Member or employee of the House *may not*

(1) Promise to use support or influence to obtain Federal employment for anyone in return for a political contribution (18 U.S.C. § 211).

(2) Deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit, provided for or made possible by an Act of Congress appropriating relief funds, because of that person's political affiliation (18 U.S.C. § 246).

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[73] The rules, promulgated pursuant to 40 U.S.C. § 175, are reproduced in the *Congressional Handbook, supra*, pp. 2.25 and 7.16.

[74] *United States* v. *Thayer*, 209 U.S. 39, 44 (1908).

(3) Make or offer to make an expenditure to any person either to vote or withhold one's vote or to vote for or against any candidate in a Federal election (18 U.S.C. §597).

(4) Solicit, accept, or receive an expenditure in consideration of his vote or the withholding of his vote in a Federal election (18 U.S.C. § 598).

(5) Use any appropriation by Congress for work relief, relief, or for increasing employment or exercise any authority conferred by any appropriations act for the purpose of interfering with, restraining, or coercing any individuals in the exercise of their right to vote (18 U.S.C. § 598).

(6) If a candidate, directly or indirectly promise or pledge the appointment of any person to any public or private position or employment for the purpose of procuring support in one's candidacy (18 U.S.C. § 599).

(7) Promise employment or any other benefit provided for or made possible by any Act of Congress as a reward for political activity or support (18 U.S.C. § 600).

(8) Cause or attempt to cause anyone to make a political contribution by means of denying or threatening to deny any governmental employment or benefit provided for or made possible, in whole or in part, by any Act of Congress (18 U.S.C. § 601).

(9) Solicit political contributions from any other Federal employee or from any person receiving salary or compensation for services from money derived from the United States Treasury (18 U.S.C. § 602).

(10) If a staff employee, makes a political contribution to any Member of Congress who is one's employer or employing authority (18 U.S.C. § 603).

(11) Solicit or receive political contributions from persons known to be entitled to or to be receiving relief payments under any Act of Congress (18 U.S.C. § 604).

(12) Furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any Act of Congress (18 U.S.C. § 605).

(13) Intimidate any "officer or employee" mentioned in 18 U.S.C. § 602 to secure political contributions (18 U.S.C. § 606).

(14) Solicit or receive political contributions in a Federal building, other than unsolicited contributions that are transferred to a political committee within seven days (18 U.S.C. § 607).

(15) Knowingly accept a contribution in excess of limitations under Federal law of $1,000 to a candidate from any person or $5,000 to a candidate from multicandidate political committees (2 U.S.C. § 441a(a)).

(16) Accept or receive any political contributions from the organizational or treasury funds of a national bank, corporation, or labor organization (2 U.S.C. § 441b).

(17) Knowingly solicit contributions from Government contractors (2 U.S.C. § 441c).

(18) Make an expenditure for any general public political advertising that anonymously advocates the election or defeat of a clearly identified candidate (2 U.S.C. § 441d).

(19) Solicit, accept, or receive a contribution from a foreign national (2 U.S.C. § 441e).

(20) Knowingly accept a contribution made by one person in the name of another person (2 U.S.C. § 441e).

(21) Fraudulently misrepresent oneself as speaking or acting on behalf of a candidate (2 U.S.C. § 441g).

(22) To the extent that an individual may make political contributions or expenditures as discussed above, the individual may not

(a) Make a cash contribution in excess of $100 (2 U.S.C. § 441g);

(b) Make contributions in excess of $1,000 per election to any candidate, $5,000 per calendar year to political committees, and $20,000 per calendar year to national party committees or make contributions aggregating over $25,000 per calendar year (2 U.S.C. § 441g).

(c) Make a contribution in the name of another (2 U.S.C. § 441f).

(d) Make contributions or expenditures in excess of $100 other than by contribution to a committee or candidate, without filing a report with the Federal Election Commission (2 U.S.C. § 434(e)).

Appendices to Chapter 8

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT ADVISORY OPINION No. 6 ISSUED SEPTEMBER 14, 1982

General Interpretation of House Rule XLIII, Clause 6, and House Rule XLV

REASON FOR ISSUANCE

The Committee has received an inquiry concerning the application of House Rule XLIII, clause 6, and Rule XLV, to the use by a Member of campaign funds to advertise or promote a town meeting in his district and in areas newly added to the district by reapportionment after notice of the meeting has been mailed under the frank.

BACKGROUND

House Rule XLIII, clause 6, prohibits a Member from expending funds from his campaign account that are not attributable to "bona fide campaign purposes." Rule XLV, clause 1, bars a Member from maintaining, or having maintained for his use, "an unofficial office account." These provisions were included in the amendments to the House Rules made by H. Res. 287, 95th Congress, adopted pursuant to the recommendations of the Commission on Administrative Review. The Commission, in explaining the purpose of these rules, observed (*Financial Ethics,* H.R. Doc. No. 95-73, 95th Congress, 1st Session 23 (1977)):

> The Commission strongly believes that a wall should be built between political expenses and private money and official expenses and public money, that private money should not be relied upon to pay for the conduct of the House's official business. It regards such a wall as critically important to the integrity of the representative process. . . .

Although federal statutory law (2 U.S.C. § 439a) generally would allow a Member to use excess campaign funds to defray ordinary and necessary expenses incurred in connection with holding office, the amendment to House Rule XLIII, clause 6, made by H. Res. 287, 95th Congress, specifically prohibits this practice. As the Select Committee on Ethics observed in its final report (H.R. Report No. 95-1837, 95th Congress, 2d Session (1979)): "The intent of this rule is to restrict the use of campaign funds to politically related activities and to thus prohibit their conversion to personal use or to supplement official allowances." Rule XLV has a similar purpose. It was intended to eliminate the potential for " 'influence peddling' through private financing of the official expenses of Members of Congress." See *Financial Ethics, supra,* at 18.

In adopting these rules, the House was aware that "there are gray area expenditures which could be classified (as) either political or official. . . ." See final report of the Select Committee on Ethics, *supra.* The rules do not include any definition of "political" or "official" expenses. As Representative Frenzel observed during the debate on H. Res. 287, 95th Congress (123 *Cong. Rec.* 5900 (March 2, 1977)):

> What is political is a matter of fact rather than of definition. . . .
>
> * * * * *
>
> (W)hat we have tried to do is to confine expenses from political accounts or volunteer committee accounts to expenses that are political. *By and large, that definition will be left up to the Member and to his volunteer committee,* and as it is broadly defined under the election law. (Emphasis added.)

The Select Committee on Ethics, in its final report, *supra,* also expressed the view that Members should make the determination as to whether gray area expenditures are to be classified as political or official.

SUMMARY OPINION

This committee agrees that the determination as to whether a particular expense is for political or official purposes should be made by the individual Member. A gathering of a Member's constituents at a "town meeting" could be either a political (campaign) event, or an official (representative) one. In such a case, the Member is free to use his judgment in defining it as political or official. However, this committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official.

When a Member sends announcements of a town meeting under the frank, he has thereby made the decision that the event is an official one. Under Federal law, the franking privilege may only be used in the conduct of official business. 39 U.S.C. § 3210(a)(1). Having thus defined the event as an official one, he may not then use campaign funds (Rule XLIII, clause 6) or any other private funds (Rule XLV) to conduct, promote, or advertise the event. (It is noted that Rule XLV was intended to prohibit the expenditure of private monies for official purposes even if no particular account or repository as such is maintained. See the colloquy between Representatives Panetta and Obey during the debate on H. Res. 287, 95th Congress, 123 *Congressional Record* 5941 (March 2, 1977).)

Because the town meetings that are the subject of this opinion were promoted in the first instance by means of the frank, they thereby become official and representational functions and it is an improper mixture of public and campaign funding to promote such official town meetings as political events. In a case such as this, the wall between public and private funding is easily placed.

FURTHER CONSIDERATIONS

Having stated the general rule that certain events or activities may be deemed "official" or "political" but not both, and that the Member must exercise his judgment in making such determinations, there are long established practices not offensive to the principle of separation that are not affected by this Advisory Opinion.

One such practice is a campaign committee making use of materials originally generated and used solely in the course of the Member's official and representational duties once the official use of the material is exhausted. For example, a Member may, at official expense and by means of the franking privilege, reproduce and distribute otherwise frankable reprints from the *Congressional Record,* radio and television programs, correspondence from public officials, etc. The Committee believes that Rule XLV, which prohibits outside contributions for official purposes, does not ban a Member from later distributing such items at campaign committee expense provided that *all* the expenses associated with reproducing and distributing the material are paid from campaign funds and the material itself or the context in which it is presented clearly establishes its campaign or political purpose and thus its non-official use, so that there would be no appearance that private funds are supplementing official allowances.

Another such practice occurs if an individual or organization, *without the Member's consent,* expends funds or donates services to advertise or promote some official or representational activity of the Member. For example, no violation would occur if a radio or television station in a Member's district promoted a Member's previously announced town meeting in public service announcements.

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 4

SUBJECT

Under House Rules, may a Member of the House or the spouse of a Member solicit cash gifts of less than $100 for personal use through a direct mass mailing?

REASON FOR ISSUANCE

A Member of the House has requested an advisory opinion as to whether his proposal to solicit gifts of less than $100 for personal use would be in violation of House Rule XLIII.

BACKGROUND

Rule XLIII, clause 4, prohibits acceptance of gifts aggregating over $100 from "persons" having a direct interest in legislation before the Congress. Since the proposal would solicit only gifts of less than $100, it would not be in violation of clause 4.

However, Rule XLIII, clause 7, appears to have direct application to the proposed plan to solicit gifts. Before March 3, 1977, Rule XLIII, clause 7, read as follows:

> A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial din-

> ners or other fund-raising events if the sponsors of such affairs do not give clear notice in advance to the donors or participants that the proceeds are intended for other purposes.

This provision was designed to deal with situations in which donations were given to Members under the mistaken notion that they were to be used for campaign purposes when, in fact, they were treated as personal gifts. Hence, language was adopted which specified that unless advance notice was given, proceeds from fund-raising events could not be converted to personal use.

The House Commission on Administrative Review recommended that proceeds from testimonial dinners and other fund-raising events should not be allowed to be converted to personal use under any circumstances. Effective March 3, 1977, H. Res. 287 amended clause 7 to read simply:

> A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

In a technical sense, then, the propriety of the proposal turns on the interpretation of a "fund-raising event". There was no legislative history defining the term fund-raising event when Rule XLIII was adopted in 1968.

But in view of the widespread use of mass mailings to raise funds (direct mail solicitation has become a principal fund-raising technique since 1968), it would appear that the proposal under consideration constitutes a fund-raising event. In the age of computerized mass mailings, it is unnecessary for people to gather together in a common place on a particular date to constitute a "fund-raising event."

Additionally, Rule XLIII, clause 2, would appear to have applicability in this case. The provision states:

> A Member, officer, or employee of the House of Representatives shall adhere to the spirit and letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

A major thrust of the provisions contained in the new House Rules adopted March 2, 1977, was to severely limit the potential for Members to "cash in" on their positions of influence for personal gain. Therefore, a limitation on outside earned income was proposed and adopted. A proposal to abolish unofficial office accounts was offered and adopted. A proposal to prohibit the conversion of political funds to personal use was adopted. And the proposal discussed above to treat all proceeds from fund-raising events as campaign contributions was also adopted. Therefore, it would appear that a proposal to solicit funds for personal use would be contrary to the "spirit" of the House Rules adopted pursuant to H. Res. 287.

The final question concerns the propriety of a spouse raising funds through mass mail solicition for the benefit of the Member. While the Select Committee recognizes the basic independence of the spouse, the spouse under these circumstances would be acting essentially on behalf of the Member. Thus, the Member would be conducting indirectly the very activities he would be prohibited from engaging in directly.

Consequently, the mass mail solicitation of funds by a spouse for a Member's use also appears to violate the "spirit" of House Rules.

SUMMARY OPINION

A direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fund-raising event" for purposes of House Rule XLIII, clause 7. Proceeds from a "fund-raising event" for a Member of the House must be treated as "campaign contributions" and cannot be converted to personal use by the Member. Therefore, any such attempt to raise funds for personal use through a mass mailing would be in violation of House Rule XLIII, clause 7. Additionally, any such activity would appear to be contrary to the spirit of House Rules and, therefore, in violation of House Rule XLIII, clause 2.

SELECT COMMITTEE ON ETHICS ADVISORY OPINION NO. 11

SUBJECT

The Select Committee has been asked whether a Member could accept proceeds from a fund-raising event for the Member's unrestricted personal use, if the event were sponsored by a group independent of the Member.

REASON FOR ISSUANCE

The Select Committee has been asked whether a Member could accept proceeds from a fund-raising event for the Member's unrestricted personal use, if the event were sponsored by a group independent of the Member.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 7, as amended on March 2, 1977, prohibits the conversion of proceeds from testimonial dinners or other fund-raising events to a Member's personal use. The Select Committee stated in Advisory Opinion No. 4 that a mass mailing constituted a fund-raising event for purposes of Rule XLIII, clause 7, and concluded that neither a Member nor his spouse could directly solicit funds for personal use by a fund-raising technique such as a mass mailing.

An additional question has been asked which concerns the acceptance of funds for a Member's unrestricted personal use that are raised by a group independent of the Member, his spouse, staff, or campaign committee.

As a general proposition, House Rules do not affect the actions of any individuals or organizations which are independent of a Member of Congress. The issue before the Select Committee, however, is not whether an independent group may conduct a fund-raising event, but whether a Member may accept the proceeds of such an event given in his behalf when such proceeds are for the Member's unrestricted personal use.

A major thrust of the provisions contained in the new House Rules was to severely limit the potential for Members of Congress to use their positions of influence for personal gain. In this context, therefore, it is irrelevent whether the Member himself solicits these funds, or whether the Member accepts funds for personal use that are solicited on his behalf by an independent committee.

Rule XLIII, clause 2 specifically states that a Member shall "adhere to the spirit and letter of the Rules of the House of Representatives." The clear intent of clause 7 is to prevent the acceptance of proceeds from fund-raising events for personal use. Thus, to allow a Member to accept such proceeds if raised by a paper "Dinner Committee," "Fund-raising Committee," or similar subterfuge would render Rule XLIII, clause 7 meaningless.

Finally, the Committee recognizes the distinction between the treatment of proceeds from a fund-raising event for purposes of Rule XLIII, clause 7, and acceptance of gifts for purposes of Rule XLIII, clause 4. Clause 4 does not prohibit the acceptance of gifts from anyone who is not a foreign national or does not have a direct interest in legislation before the Congress. Clause 7, however, addresses gifts from fund-raising events, specifying that proceeds from such events should not be treated as personal gifts, but as campaign contributions.

SUMMARY OPINION

For purposes of House Rule XLIII, clause 7, a Member is prohibited from accepting the proceeds from a fund-raising event for his unrestricted personal use.

GUIDANCE CONCERNING POLITICAL ACTIVITIES OF MEMBERS, OFFICERS AND EMPLOYEES OF THE HOUSE

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT LETTER, NOVEMBER 21, 1985

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICAL CONDUCT,
Washington, DC, November 21, 1985.

DEAR COLLEAGUE: The purpose of this advisory letter is to provide Members with guidance concerning political activities which may be undertaken by Members, officers, and employees of the House of Representatives. The letter is occasioned by the recent issuance of this Committee's report concerning the results of its investigation of an alleged improper political solicitation. See, H. Rept. 99-277, issued September 19, 1985. Since publication of the report, various Members have indicated (both formally and informally) their desire that the Committee provide some brief recitation and analysis of those activities which may be engaged in by Members and their staffs. The Committee believes and agrees that these requests for guidance merit a prompt and clear response to the issues raised. Accordingly, the following discussion is intended to clarify the Committee's thoughts and approach to such matters.

SOLICITATION OF EMPLOYEES

The issues raised by the solicitation of a Federal employee (i.e., someone on a Member's staff) was addressed in detail in the Committee's recent report of September 19, 1985. In sum, it is illegal to coercively solicit a political contribution from such an individual. Both case law and the Department of Justice take the approach that, under 18 U.S.C. 602, an individual is subject to prosecution where it is shown that a Federal employee was pressured to make a political contribution to a Federal election, such as one involving the election of a Member of Congress. The Committee adopts this analysis of the statute. In so doing, the Committee is mindful of the view that some have urged that coercion not be considered an element of the offense addressed by 18 U.S.C. 602. The Committee is not persuaded that this would be a proper reading of the statute in light of the expressed analyses of the Department of Justice and the courts in implementing its provisions. While it may well be that coercion should not be considered an element of the crime, this is a matter which should be specifically addressed in legislation. Until such time, this Committee will treat as improper, subject to investigation and, as appropriate, sanction, any indication that an individual subject to this Committee's jurisdiction has applied coercion to a Federal employee for the purpose of extracting a political contribution.

LOCATION OF SOLICITATION

The Committee's September 19, 1985, report also addressed the matter of soliciting political contributions in a Federal building, an activity which is rendered illegal by 18 U.S.C. 607. As reflected in the report, this Committee takes the view that section 607 embraces not only the location where a solicitation is received, but also the location from which it is prepared or distributed. It is this Committee's position that under no circumstances should any Federal resources be utilized to support the implementation of a political solicitation activity. Such resources would include using office space to draft, edit, type, duplicate, or assemble mailing materials, as well as the ultimate distribution of such matter. Similarly, this prohibition would also apply to the use of staff resources on "official" time to conduct such activities.

The September 19, 1985 report, did, however, take the view that sections 602 and 607 are complementary provisions—the former insulating Federal employees from political shakedowns, the latter insulating the Federal workplace from such activities. This is not to say that noncoercive solicitations in a Federal area would avoid the attention and concern of this Committee. Indeed, the Committee emphasizes its view that no activities of a political solicitation nature should occur with the support of any Federal resources (staff or space) in order to avoid any question that a violation of 18 U.S.C. 607 has occurred.

RECEIPT OF CONTRIBUTIONS

While not a focus of the recent report, several questions have been raised regarding the propriety of Members receiving political contributions in their offices. In this connection, the Committee invites Members' attention to 18 U.S.C. 607(b). This provision states that the prohibition against receiving solicitations in a Federally protected area does not apply to contributions received by staff in a Member's office so long as the contribution was not solicited in a manner which directs the contributor to mail or deliver the contribution to a Federal area (i.e., Member's office) and provided that such contributions are transferred within seven days of receipt to a political committee. The Department of Justice guidance on this aspect of the statute also clearly indicates that the Department's Criminal Division believes Congress intended that Members be permitted to personally receive unsolicited contributions in their offices to the same extent as their staffs. The Committee concurs with this interpretation of the statute.

POLITICAL CONTRIBUTIONS FROM STAFF

Another issue on which guidance has been sought relates to the propriety of a Member receiving a political contribution from an individual on that Member's staff. Such contributions are expressly prohibited by law. The provisions of 18 U.S.C. 603 make it a crime for an individual to make a political contribution to the employer or employing authority of the person making the contribution regardless of whether the employee is coerced or volunteers to make the contribution.

MEMBER TO MEMBER SOLICITATIONS

The September 19, 1985, report notes that Member to Member solicitations are not viewed as within the prohibitions of either 18 U.S.C. 602 or 607 even where such solicitations occur in a Member's office. Indeed, there is precedent in the House of Representatives supporting this conclusion. Thus, while Members may engage in such activities, Member to staff solicitations, regardless of where they occur, raise the issues discussed above concerning application of 18 U.S.C. 602. It is for this reason the Committee admonishes Members to be extremely cautious when pursuing political solicitation activities.

OTHER MATTERS

The Committee realizes that there well may be other questions relevant to the conduct of political activities not addressed in the foregoing discussion. Should such questions arise, the Committee suggests that interested Members contact the Committee staff in order to receive advice on the matters raised. Finally, the Committee invites all Members' attention to the *Ethics Manual For Members and Employees of the U.S. House of Representatives,* and more specifically Chapter 10* thereof entitled, "Campaign Funds and Practices", which contains a detailed discussion of such issues.

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* Now Chapter 8.

We hope this letter will be of assistance and clarification to you regarding the conduct of political activities.

Sincerely yours,

JULIAN C. DIXON,
Chairman.
FLOYD D. SPENCE,
Ranking Minority Member.

Chapter 9. COMMUNICATIONS WITH ADMINISTRATIVE AGENCIES

Highlights

Assisting constituents in their dealings with administrative agencies is generally considered a typical and useful function of a congressional office.

In communicating with a Federal agency on behalf of a constituent, a Member, officer, or employee of the House may not

—make prohibited, off-the-record contacts to an agency considering a matter under a formal proceeding or

—receive money or things of value (other than one's salary) in return for helping someone.

Ethical standards instruct Members, officers, and employees that

—Communications to agencies on behalf of constituents may be properly made to request information or status reports, urge prompt consideration of a matter, arrange for interviews or appointments, express judgments on a matter (subject to *ex parte* communications rules), and ask for reconsideration based on law and regulation.

—Undue or improper pressure should not be placed upon administrators, such as by suggestions or threats of favoritism or reprisals.

—Fraudulent representations may not be made to agencies of the Government.

Staff employees of a Member may not represent someone before the Government in a private capacity, that is, other than in the performance of official congressional duties.

When recommending someone for Federal employment,

—No specific restrictions apply to Members, officers, and employees making recommendations and referrals for general employment in the civil service.

—However, selection in the civil service is intended to be on merit, and an appointing officer in the Government may consider a recommendation only on the basis of the applicant's character and residence.

—Recommendations for the Postal Service may be made only on the basis of the applicant's character or residence.

Chapter 9. COMMUNICATIONS WITH ADMINISTRATIVE AGENCIES

An important aspect of a Congressman's representative function is to act as a "go-between" or conduit between his constituents and administrative agencies of the Federal Government. Such activity, in the opinion expressed by the late Senator Paul H. Douglas, serves a useful function in our governmental process by helping "legislation" and "administration" perform their respective jobs adequately through the interest of one in the work of the other.[1] In a committee print entitled "Ethics in Government," a subcommittee headed by Senator Douglas stated that legislators performing casework functions can "legitimately serve as an informal board of inspectors" of administrators, "can prevent the administrators from flagging in their zeal, and can detect and check abuses in the conduct of public business." [2] Douglas concluded in this own study of ethics in Government that there is "a sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies." [3]

Ex Parte Communications. Even though the casework function is an important congressional duty, it is not totally unrestricted. Federal law specifically prohibits certain communications on the merits of a matter, known as *ex parte* communications, from a congressional office to an executive or independent agency when a matter is being adjudicated or is in a formal proceeding within the agency.[4] *Ex parte* communications are oral or written communications made without proper notice to all parties and not on the public record, from an interested person outside the agency to a member of the agency, an administrative law judge, or an employee involved in the decision-making process.[5] The "Government in the Sunshine Act," [6] enacted in 1976, prohibits a congressional office from making an *ex parte* communication to an administrative agency on behalf of a constitutent concerning the merits of an issue that is subject to formal agency proceedings [7]—basically those of a "quasi-adjudicatory" nature or those rule-making proceedings that must include formal hearings and a decision on the record.

The legislative history of the Government in the Sunshine Act shows that "the prohibition only applies to formal agency adjudication. Informal rule-making proceedings and other agency actions that are not required to be on the record after an opportunity for a hearing will not be affected by the provision." [8] Thus, congressional offices may undertake communications to an agency on behalf of a constituent concerning those matters not subject to formal agency proceedings. However, it should be noted that some communications, even if related to matters not in a formal agency proceeding, may become part of a public record concerning that matter in the interest of fairness under various agency regulations and a decision by a United States Court of Appeals.[9]

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[1] Douglas, Paul H., "Ethics in Government," Cambridge, 1952, p. 87.

[2] "Ethical Standards in Government," Committee Print, Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 82d Cong., 1st Sess., p. 28.

[3] Douglas, *supra*, at p. 87.

[4] 5 U.S.C. § 557(d).

[5] 5 U.S.C. § 551(14).

[6] P.L. 94-409, § 4.

[7] Proceedings subject to 5 U.S.C. § 557(a).

The statutory proscription on communicating to agencies concerning a formal agency proceeding does not extend to inquiries on the status of a proceeding [10] or to "general background discussions about an entire industry which do not directly relate to specific agency adjudication involving a member of that industry, or to formal rule-making involving the industry as a whole." [11] As stated in the House Report on the Government in the Sunshine Act: "While the prohibitions on *ex parte* communications relative to the merits apply to communcations from Members of Congress, they are not intended to prohibit routine inquiries or referrals of constituent correspondence." [12]

Both the House and Senate reports recognized the possibility that background information or a request for a status report "may in effect amount to an indirect or subtle effort to influence the substantive outcome of the proceedings" and thus in doubtful cases should be treated by agency personnel as an *ex parte* communication "to protect the integrity of the decision-making process." [13]

To meet the requirement of the statutory provisions against *ex parte* presentations to agencies, the safest procedure is to put the arguments in writing and request that they be made a part of the record and open for the information of all interested parties and the public.

Undue Influence. In addition to specific statutory proscriptions, ethical standards and guidelines exist that serve to narrow the permissible scope of such activities, prevent abuses of office, and limit undue or improper influence or pressure upon administrative officials and the administrative process. Undue influence may result from some congressional interventions into ongoing administrative proceedings. Senator Douglas pointed out, with respect to proceedings conducted by administrative personnel, that a legislator "should make it clear that the final decision is in their hands." [14] Lower Federal court cases have held that certain congressional interference with an ongoing administrative proceeding may so unduly influence the proceeding that the decision reached by the agency will be nullified by the court because of considerations of due process and fairness towards the parties to the proceeding.[15]

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[8] Senate Report No. 94-354, 94th Cong., 1st Sess., p. 35; see also, Conference Report, Senate Report No. 94-1178, 94th Cong., 2d Sess., p. 29.

[9] *Home Box Office* v. *F.C.C.*, 567 F.2d 9 (D.C.Cir., 1977), *cert. den.* 434 U.S. 829 (1977); see also, *Action for Children's Television* v. *F.C.C.*, 564 F.2d 458 (D.C.Cir., 1977).

[10] 5 U.S.C. § 551(14); see, Senate Report No. 94-1178, *supra*, at p. 29.

[11] House Report No. 94-880, Part I, at pp. 20-21.

[12] *Id.*, at pp. 21-22.

[13] *Id*, at pp. 20-21; see, Senate Report No. 94-354, *supra*, at p. 37.

[14] Douglas, *supra*, at p. 90.

[15] *Pillsbury Co.* v. *F.T.C.*, 354 F.2d 952 (5th Cir., 1966); see, also, *D.C. Federation of Civic Associations* v. *Volpe*, 459 F.2d 1231 (D.C. Cir., 1971), *cert. den.* 405 U.S. 1030 (1972); on remand, 520 F.2d 451 (D.C. Cir., 1975).

The congressional interference that led to the court's nullification of an agency decision in the case in question concerned the questioning of agency officials in congressionl hearings regarding the reasons or rationale for deciding an issue still pending before the officials in a formal setting.

No statutory provision specifically prohibits the use of undue or improper influence upon a Federal agency. However, in some situations, such conduct could result in an indictable offense. In 1970 a United States District Court sustained an indictment against two individuals, one a congressional aide, for conspiracy to defraud the United States concerning the exertion of "dishonest, unlawful, impaired and undue pressure and influence" upon Federal administrators.[16] The court sustained one count of a grand jury indictment charging the defendants with a violation of the Federal conspiracy statute, 18 U.S.C. § 371. The indictment charged that the defendants had misused the office and influence of the Speaker of the House and had pressured various Federal agencies and their employees by stating that they represented the Speaker and that the Speaker was personally interested in a certain matter pending before the agency.

Congressional Standards. This Committee has provided guidance and stated standards of conduct for communicating with executive and independent agencies of the Federal Government in an advisory opinion.[17] An appropriate course of conduct would be to introduce an individual to an agency and arrange interviews and meetings for the individual, provide a character reference for the individual or parties involved, and urge prompt and fair consideration of the matter on the merits of the case. Inquiries as to the status of a proceeding or ruling may be directed to an agency or department; and reconsideration, arguably supported by an interpretation of Federal law, regulation, or legislative intent, may be requested. If a Member has a strong feeling about a particular case, judgment upon the merits of the case may be expressed or argued, subject, of course, to the prohibitions and restrictions on *ex parte* communications concerning formal agency proceedings. If arguments are presented, no direct or indirect threat of reprisal or promise of favoritism or benefit should be suggested or inferred.

The standards expressed by this Committee are as follows:

REPRESENTATIONS

> This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:
>
> > request information or a status report; urge prompt consideration; arrange for interviews or appointments; express judgment;

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[16] *United States* v. *Sweig*, 316 F.Supp. 1148 (D.C.N.Y., 1970).

[17] House Committee on Standards of Official Conduct, Advisory Opinion No. 1, Jan. 26, 1970; the full text of the opinion appears at the conclusion of this chapter.

call for reconsideration of an administrative response which he believes is not supported by established law, Federal regulation or legislative intent;

perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

Compensation for Government Services. Federal criminal law, at 18 U.S.C. § 203, prohibits a Member of Congress, and any officer or employee of the Government, from asking for or receiving compensation for "services rendered" in relation to any matter or proceeding in which the United States is a party or has an interest before any Government agency, department, or bureau. Additionally, Members of Congress and their staffs are prohibited by House Rule XLIII, clause 3, from receiving compensation for any services rendered someone before a Federal department, bureau or agency, regardless of whether the United States is a party or has an interest. Thus, no funds or things of value, other than one's official salary, may be received by a Member or his staff for interceding or for other dealings with an administrative agency on behalf of a constituent.

Caution should always be exercised to avoid the appearance that solicitations of campaign contributions or the receipt of gifts or entertainment from constituents are connected in any way, as a *quid pro quo*, with a legislator's intervention in the administrative process on behalf of the constituent. A discussion of this problem was offered by Senator Douglas:

> It is probably not wrong for the campaign managers of a legislator before an election to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the

> two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign. It should be clearly understood that any gift they make is voluntary and there will be no question of reprisals or lack of future help by the legislator if the gift is withheld. In other words, any contribution should be not a quid pro quo but rather a wholly voluntary offering based upon personal friendship and a belief in the effectiveness of the legislator sharpened perhaps by individual experience.[18]

Unofficial Representational Activities. Federal law, at 18 U.S.C. § 205, prohibits legislative officers and employees from representing private parties, even if not for compensation, before the Federal agencies or a court in matters affecting the United States unless in the discharge of official governmental duties.

The issue of representation under section 205 arose in relation to the filing of a law suit against the United States and specified officers by a Member's legislative aide on behalf of the Member and certain constituents. The suit concerned the alleged illegality of the impoundment of certain funds designated for use within the Congressman's district. According to a report in the press, the congressional aide was warned by an Assistant Attorney General of the United States that he was "under investigation for possible violation of a law against government officials bringing claims against the government," [19] that is, 18 U.S.C. § 205. Seeking clarification of the issue, the Congressman requested an opinion from this Committee. In response, this Committee issued an advisory letter, which dealt generally with the representative responsibility of a Member of the House to his constituents and which was specifically of the opinion that the activities of the legislative aide were "in the proper discharge of his official duties," since such were under the direction of the Member to assist him in guaranteeing representation of his constituents. The letter stated specifically:

> Research into the legislative history of 18 U.S.C. § 205 indicates to us that the statute prohibited private representational activity. Since you directed [your legislative assistant] to file suit for yourself as a Congressman and to guarantee representation of your constituents, it is clear that [the legislative assistant] was not acting in a private manner. He was acting in a manner to assist you in representing your district. This is no different than your staff acting as agents for your constituents to assist them in obtaining other vested benefits. We regard this as entirely proper.[20]

Recommendations for Employment in the Competitive Service. Members of Congress are often requested to recommend a constituent for employment in the Federal Government. The regulatory and statutory framework of the merit system does not work to prohibit the making of recommendations or referrals by a congressional office on behalf of a Federal job seeker. However, the statutes and regulations relating to merit selection in the competitive service specifically prohibit a Federal officer with authority to appoint persons in the service from considering the political affiliation of an applicant in his decision to hire [21] or from considering the recommendation made by a Member of Congress except as to the character or residency of the applicant.[22]

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[18] Douglas, *supra*, at pp. 89-90.

[19] See, *Washington Star*, Mar. 19, 1974, p. A3.

[20] Letter from House Committee on Standards of Official Conduct, Mar. 14, 1974.

Employment in the competitive service of the Federal Government is intended to be based upon the "merit system."[23] Briefly, a register of eligibles is maintained by the Office of Personnel Management consisting of the names of all applicants who have qualified in examinations for competitive service.[24] In general, an appointing officer of an agency or department may exercise his own discretion to a great degree in choosing an "eligible" from the register to fill a vacancy within that agency.[25] The appointing officer, however, may exercise this discretion and make his choice, solely on the basis of merit and fitness of the applicant.[26] Further, such discretion may not be exercised in an arbitrary or capricious manner.[27]

Compliance with the general regulations concerning appointments and selections into the Government service by an appointing officer would rule out the selection of an applicant on the basis of a personal recommendation by a Member of Congress. These regulations apparently do not, however, rule out the consideration of a "character reference" as one factor in determining the fitness of an applicant. Undue pressure or influence upon a hiring authority concerning a recommendation or a referral may, however, entail an unlawful circumvention of the merit system.

The statutory provision on congressional recommendations into the competitive service, 5 U.S.C. § 3303, states that "[a]n individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant." The effect of this statute on recommendations given by and received from congressional offices was summarized by the Civil Service Commission in its "Report on Alleged Political Influence in Personnel Actions of the General Service Administration," September 1973:

> To put these findings and conclusions in proper perspective, it is necessary to understand that there is nothing wrong in the act of a Member of Congress or any other partisan source referring an individual to a Federal agency for possible employment. This is so whether the referred individual is Republican or Democrat, constituent or stranger, and regardless whether referrer and referred are or are not members of the same political party. 5

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[21] See, Executive Order No. 10577, section 4.2; see, 5 U.S.C. § 2301, 5 U.S.C. § 2302(b)(1), (3), P.L. 95–454.

[22] 5 U.S.C. § 3303; see also, 5 U.S.C. § 2302(b)(2), P.L. 95–454.

[23] See, 5 U.S.C. § 2301, P.L. 95–454.

[24] 5 U.S.C. § 3313; see, 5 U.S.C. § 3304.

[25] 5 C.F.R. § 330.101; 5 U.S.C. § 3318.

[26] 5 C.F.R. §§ 330.101, 332.404.

[27] *Blackmar* v. *United States*, 354 F.2d 340 (1965).

> U.S.C. 3303 states "An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant." This provision is not a ban on referrals and actually anticipates that referral will be made. What this statute restricts is not communications or referrals, but the reception the appointing official is free to give to referrals. Accordingly, the simple use of a political party label to condemn the otherwise innocent activities of the referrer who bears that label cannot be substituted for a demonstration that politics influenced or was intended to influence any of those activities.

Recommendations for Employment in the Postal Service. Guidelines have also been established by statute with respect to the selection of employees for the Postal Service. The Postal Service statute, at 39 U.S.C. § 1002, prohibits Members of Congress from "making or transmitting" any recommendation or statement regarding an individual under consideration for a position, other than statements on the person's character or residence. An authorized representative of the Government may also request information on employment-related qualifications of which the Member has knowledge.

General Statutory Prohibitions. In regard to Federal employment or appointment, statutory law prohibits generally any candidate from promising the appointment or the use of his influence in appointing someone to any public or private post in return for the support of one's candidacy; [28] prohibits anyone from promising employment or benefit provided for or made possible in whole or in part by an act of Congress, in return for political activity and support; [29] prohibits the denial or the threatening of any Federal employment or employment made possible through Federal funds as a means of securing political contributions from any persons; [30] and prohibits the receipt of anything of value in return for the promise of support or use of influence in obtaining someone a Federal post.[31]

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[28] 18 U.S.C. § 599.

[29] 18 U.S.C. § 600.

[30] 18 U.S.C. § 601.

[31] 18 U.S.C. § 211.

Appendix to Chapter 9

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT ADVISORY OPINION NO. 1 ISSUED JANUARY 26, 1970

(On the Role of a Member of the House of Representatives in Communicating With Executive and Independent Federal Agencies*)

REASON FOR ISSUANCE

A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

BACKGROUND

The first Article in our Bill of Rights provides that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances." The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his representative in the Congress, as evidenced by the fact that congressional offices devote more time to constitutent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letter or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and provide a valuable oversight disclosure to the Congress.

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*Subsequent legislation, regulations or rules may affect part or all of this advisory opinion (see 5 U.S.C. sec. 557(d) relating to prohibited ex parte communications to administrative agencies).

Further, because of the complexity of our vast federal structure, often a citizen simply does not know the appropriate office to petition.

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

> request information or a status report;
> urge prompt consideration;
> arrange for interviews or appointments;
> express judgments;
> call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;
> perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constitutents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

CLEAR LIMITATIONS

Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

> (1) at a time when he is a Member of Congress . . .; or
> (2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than $10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation of any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

Chapter 10. SUPPORT ORGANIZATIONS AND UNOFFICIAL ENTITIES

Highlights

Members and employees of the House must frequently interact with various public, as well as private, organizations. Guidelines exist for the composition and activities of those public organizations that have been established to support official functions.

A Legislative Service Organization (LSO) is an organization comprised solely of Members of Congress and financed exclusively from official allowances. The LSOs may receive no outside income or contributions from unofficial sources. This financial support and the regulations governing their activities distinguish LSOs from other Member and staff organizations.

Members should not permit any non-House organization or individual to use expressions or symbols that might convey an erroneous impression that the group or activity is officially sponsored or endorsed. This is particularly applicable to commercial enterprises.

Joint endeavors, undertaken with a combination of private resources and official funds, are generally prohibited. This does not preclude the personal involvement of Members in such functions, including lending their names in support of specific causes. Members have greater leeway in undertaking cooperative programs with Federal, State, or local government agencies.

Overall, Members and employees need to distinguish carefully between what constitutes official and unofficial actions when they interact with outside, private organizations.

Chapter 10. SUPPORT ORGANIZATIONS AND UNOFFICIAL ENTITIES

Members and employees of the House of Representatives are continually presented with opportunities to interact with various groups and organizations. For example, Members may find it advantageous to pool resources in pursuit of a common legislative goal, staff may seek an informal forum to meet individuals in other offices and exchange ideas, or constitutent groups may seek congressional support for public and private initiatives. In some instances, Members may be requested to lend their names to an undertaking or otherwise assist in advancing an essentially private endeavor.

Various standards exist regarding the composition and activities of groups established by Members and employees to support their official functions. In addition, the ways in which a Member of Congress can work cooperatively with private entities are restricted. A primary consideration in any contemplated arrangement is the need to distinguish clearly between official congressional actions and other activities in which the Member engages.

Legislative Service Organizations. The term "Legislative Service Organization," or LSO, refers to a particular category of working groups, or caucuses, organized by Members primarily to provide legislative services and assistance to Members. Resources are pooled to pursue common legislative goals. In addition to the House rules applicable to all Members, officers, and employees, LSOs are subject to Committee on House Administration regulations issued on October 21, 1981.[1]

The LSOs include any congressional caucus, committee, coalition, or similar group that, under the Committee on House Administration regulations, demonstrates in writing that it meets the following criteria:

—The organization must consist *solely of Members* of the House or Members of the House and Senate, 30 of whom or two thirds of the organization's membership, whichever is less, attest that they are sponsors.

—It must operate solely to provide legislative services or other assistance to its members in the performance of official duties.

—Resources may be provided through allocation of expenses to, or dues or assessments from, the allowances of Members of Congress, but no income or contributions either in cash or in kind, may be received from any unofficial source.

—The organization may not be incorporated or hold separate tax-exempt status.

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[1] The regulations are included in the Report of the Ad Hoc Subcommittee on Legislative Service Organizations, Committee on House Administration, 97th Cong., 2d Sess., June 24, 1982, pp. 13-15.

—Quarterly public disclosure reports must be filed with the Clerk of the House detailing receipts, expenditures, and activities.

An important consideration in drafting the regulations was the concept that " . . . Members should not be allowed to do collectively—through a legislative service organization—what the Rules of the House prohibited Members from doing individually." [2] Thus, just as with congressional offices discussed in Chapter 5, under House Rule XLV no private resources, whether in kind or monetary, may be used for the operation of an LSO or Member caucus. Any group that receives such contributions or income may not receive support from official allowances and may not provide legislative services to Members, under House Rule XLV. Similarly, an LSO may not use official resources to support the operations of a private organization. However, this does not mean that LSO's are prohibited from cooperating with outside groups under appropriate circumstances, as discussed later in this chapter.

Because LSOs are considered as extensions of the individual offices of participating Members, staff may be paid from the clerk-hire allowance, and administrative costs may be paid in the form of dues or assessments from the Allowance for Offical Expenses or from Members' personal funds. In addition, because LSOs receive no private contributions or income from any source other than Congress or its Members, they can be located in House controlled space.

Informal Member and Staff Organizations. Members and employees are not prohibited from associating with caucuses and other groups not certified as LSOs. Informal Member caucuses are distinguishable from LSOs in that the former are dependent on the personal support of individual Members for their existence while LSOs are supported by disbursements from the Member's official allowances (and perhaps from the House itself in the form of office space and facilities). Because no official resources may be used to operate informal organizations, Members and staff should avoid creating the impression that the organizations are in some way sponsored by or affiliated with Congress. However, House Rule XLV is applicable to both types of organizations because each plays a role in assisting individual Members in the conduct of their official responsibilities.

By way of contrast, organizations operating within the House that are formed for health, welfare, social, or occupational interchange between their members may receive limited assistance from unofficial sources. For example, various staff clubs and associations, comprised of individuals such as administrative or legislative assistants, support their activities primarily through fees paid from personal resources of their members. Such organizations are generally allowed to conduct meetings in House facilities. However, these groups are formed primarily for the benefit of their members. They do not directly participate in or contribute to the legislative process, and they receive no support from the House for that purpose. Such groups have been found by this Committee to be generally beyond the strictures of Rule XLV.

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[2] *Id.*, at p. 6.

Although Rule XLV does not restrict the ability of House health, welfare, social, and occupational organizations to receive outside assistance, other ethical considerations do limit the amount of such assistance that may be accepted. As discussed in Chapter 2, House Rule XLIII, clause 4, prohibits Members, officers, and employees from accepting gifts in a calendar year from a source with an interest in legislation, or a foreign national, when the aggregate value of the gifts is $100 or more. Effective with the 100th Congress, gifts of less than $50 are not counted toward the aggregate limit. The receipt of something of value by a group of employees primarily for their *own* benefit is a gift subject to the rule. Therefore, both individual employees and groups of employees should exercise caution in accepting contributions when the source has an interest in legislation and should contact this Committee if any questions arise.

Additionally, the Code of Ethics for Government Service, paragraph 5,[3] prohibits anyone in goverment service from accepting " . . . benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." Given the close relationship between House staff and their employing Members of Congress, a solicitation by an employee organization for the purposes of supporting its activities may be construed as improper.

Expressions or Symbols of Official Sponsorship. Members of Congress have occasion to communicate with the public in various capacities. However, communications of a political or private nature, whether sent by a Member or by organizations outside the House, may not be prepared or mailed at official expense, and should not carry expressions or symbols that might improperly indicate official sponsorship. (See Chapters 4 and 5 for discussions of official mailings at government expense.)

Clause 11 of House Rule XLIII, added to the Code of Official Conduct on January 15, 1979,[4] provides as follows:

> A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "official business," or any combination of words thereof, on any letterhead or envelope.

The primary purpose of the provision is to prevent private organizations from using a facsimile of congressional stationery to solicit any contributions or support, thus conveying an impression that the solicitation is endorsed by the Congress or is related to the official business of any Member whose name appears on the letter. In providing a general interpretation of the rule, this Committee found that "the use of congressional letterhead by private organizations is a deliberate misrepresentation which reflects discredit upon the House of Representatives." [5]

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[3] 72 Stat., part II, B 12; these standards were adopted in H. Con. Res. 175, 85th Cong., and have been held to constitute a continuing benchmark for the appropriate conduct of Members, officers, and employees. See, House Report No. 94-1364, 94th Cong., 2d Sess., pp., 3, 7-8.

[4] H. Res. 5, 96th Cong., 1st Sess., pp. 7-16.

The rule encompasses reproduction of an official communication in another publication, as well as direct use of official-appearing documents. Even if the specific words mentioned in the rule are not used, authorizing a non-House individual or group to use letterhead, expressions, or symbols purporting to be, or conveying the impression of, an official communication from the Congress would violate the spirit of House rules.[6]

The prohibition of Rule XLIII, clause 11, is not intended in any way to restrict a Member's communication with the public or the ability to lend one's name in support of any organization or interest group. A Member is free to sign a fundraising appeal or solicitation of political support on a non-House group's own letterhead and to be identified as a Member of Congress. Similarly, a Member's name and title may appear in the letterhead of an organization with which the Member holds an actual or honorary position, provided the letterhead does not purport to be an official communication from the Congress.

The term "non-House individual, group, or organization" as used in the rule does not extend to a Member's principal campaign committee. A Member is not prohibited from using a *facsimile* of official stationery in fundraising activities for his own campaign.[7] Since letters advocating a Member's reelection or soliciting campaign contributions generally must include a conspicuous statement indicating the sponsor of the communication,[8] it is unlikely that such correspondence would be misinterpreted as an official communication from the House or an endorsement by the Congress.

Use of the Great Seal of the United States on letterhead may also convey an impression of officiality. The Federal Criminal Code [9] provides misdemeanor penalities for the knowing display of a likeness or facsimile of the Great Seal of the United States on, among other things, stationery, in a manner reasonably calculated to convey a false impression of sponsorship or approval by the Government of the United States. The Department of Justice has consistently advised both political committees and Members of Congress that the display of the Great Seal on stationery used for solicitation purposes is a violation of this provision.[10]

On the other hand, the General Counsel to the Clerk of the House has distinguished the Great Seal from "congressional seals," which he has advised may be used *by Members* on Christmas cards and other items that are neither printed nor mailed with an expenditure of official funds.[11] As with other markings of official sponsorship, Members should not permit non-House individuals or groups to make use of either the Great Seal or "congressional seals."

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[5] House Committee on Standards of Official Conduct Advisory Opinion No. 5, issued Apr. 4, 1979. The full text of the opinion appears at the conclusion of this chapter.

[6] See, House Rule XLIII, cl. 2.

[7] See, Committee Advisory Opinion No. 5, *supra.*

[8] 2 U.S.C. §441d.

[9] 18 U.S.C. §713.

[10] See, letter from John C. Keeney, Acting Assistant Attorney General, Criminal Division, to the Chairman of the Committee on Standards of Official Conduct, Aug. 9, 1984.

[11] Memorandum from Stephen R. Ross, Oct. 16, 1984.

Involvement with Outside Activities and Entities. Just as Rule XLV prohibits using outside funds or services to supplement congressional allowances, Members and employees of the House are prohibited from using official resources for any private purpose.[12] A legitimate question is raised in this context regarding the distinction between activities that may be considered "official" and those that are not.

Both House rule [13] and federal statute [14] give the Committee on House Administration the ability to make that distinction through its supervisory authority over expenditures, as well as the auditing and settling of accounts. Pursuant to this authority, "Regulations and Procedures for Allowances and Expenses for Members, Committees, and Employees of the House" were promulgated.[15] The regulations identify a wide range of activities and specific expenses that may be supported from official allowances, and thus are reimbursable, as well as expenses that may not be reimbursed. The regulations specifically preclude reimbursement for some expenses that a Member may assert support official and representational duties (e.g., holiday greeting cards).

However, it is difficult, if not impossible, to comprehensively define what is and is not an official duty and an "official" expenditure. The United States Supreme Court, in discussing the applicability of the immunity provided Members of Congress by the "speech or debate" clause of the Constitution, noted that appropriate activities of a Member of Congress include various services to constitutents, such as arranging appointments with representatives of executive agencies, assisting constitutents in securing government contracts, and providing information via newsletters.[16] However, the Court did not attempt to define "official duties" as the phrase relates to the functions a Member of Congress performs. Similarly, when debating the prohibition of Rule XLIII, clause 6, against use of campaign funds for other than *bona fide* campaign purposes, the House recognized that precise definition of what constitutes an "official" expenditure is difficult, if not impossible.[17]

The conclusion reached in that debate was that the Member ultimately must determine if an activity, and the concomitant expense, is more properly characterized as official or campaign-related. In its *Final Report* to the 95th Congress, the Select Committee on Ethics concurred in the position taken by the debaters.[18]

This decision by a Member regarding officiality has ramifications regarding the nature and extent of participation in an undertaking for both Members and outside organizations. If a Member determines that an undertaking is official, support from outside organizations or personnel would be inappropriate under Rule XLV. Conversely, if an event is deemed to be other than an official function, resources provided by House allowances may not be utilized. Furthermore, an activity may not be treated as both official and unofficial.[19] Thus, joint endeavors which would be supported with a combination of private resources and official funds, are generally prohibited.

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[12] 31 U.S.C. § 1301.

[13] House Rule X, cls. 1(k) and 4(d).

[14] See, e.g., 2 U.S.C. §§ 57, 57a, 72b, 95, and 276c-1.

[15] The regulations are included in the *Congressional Handbook*, U.S. House of Representatives, prepared by the Committee on House Administration, September 1985.

[16] See, *United States* v. *Brewster*, 408 U.S. 501, 512 (1972).

[17] See, 123 *Congressional Record* 5900, Mar. 2, 1977.

[18] House Report No. 95-1837, p. 16.

The restriction against jointly sponsored activities applies with respect to any private entity. An organization's charitable or educational status does not render acceptable a practice that would otherwise be inappropriate.

These considerations do not prevent the personal involvement of Members in various functions, including lending their names to support specific causes, as long as no appearance is created of official sponsorship. Similarly, cooperation is permitted with private groups as long as there is no cross-infusion of resources. A competition to select a work of art to hang in the Capitol is an example of such cooperation. A Member may permit a county, state, or local art council, museum, or other organization to select a painting through a competition sponsored and initiated by that organization. Furthermore, the local group could receive financial support from corporations, state or local governments, or similar sponsors. The fact that the fundraising effort is conducted by an outside organization in support of its competition, not by the Member or the Member's clerk-hire staff, would allow the Member to endorse the competition and lend his or her name in support of the event.

As is the case with individual Members, Legislative Service Organizations may also cooperate with outside organizations. The fact that a private group wishes to promote objectives similar to those of an LSO does not preclude coordination of activities as long as care is taken to prevent any cross-infusion of public and private resources. A private entity may wish to host an event which is not in support of an LSO's legislative activities, such as one giving special recognition to an individual. The LSO could be publicly identified as cooperating in the undertaking because private resources were not being expended to subsidize the LSO's legislative services or provide assistance to Members in performance of official duties. In such an instance, the LSO could not receive any financial benefits, nor could it utilize any of its official resources for the event. The separate identity of the sponsor should be made clear to all participants. Thus, the LSO should not be identified as a "host" or "sponsor." Instead, it should be noted that the private organization is conducting the activity "in cooperation with" or "in conjunction with" the LSO.

Government Agency Conferences. Services provided by federal, state, and local government agencies do not fall within the prohibition of Rule XLV.[20] Thus, Members may make use of government facilities and personnel, to the extent permitted by the participating agencies, to support conferences on such subjects as government procurement, trade assistance, or other Federal programs.

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[19] See, Committee on Standards of Official Conduct Advisory Opinion No. 6, Sept. 14, 1982, the text of which appears at the conclusion of Chapter 8.

[20] See, Select Committee on Ethics Advisory Opinion No. 6. which appears at the conclusion of Chapter 5. In accordance with Advisory Opinion No. 7 of the Select Committee, food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments, or political subdivisions thereof are also exempt from the gift prohibition of Rule XLIII, cl. 4; that opinion appears at the conclusion of Chapter 2.

Such official conferences may include nongovernment participants who would pay registration fees to help defray the expenses associated with the conferences. Although Rule XLV prohibits unofficial office accounts, this Committee has consistently held since the rule's adoption that House Members may establish temporary, noninterest-bearing bank accounts to support official conferences having such registration fees. Registration fees should be calculated to cover costs and not generate a surplus; however, in some instances a surplus nevertheless results. Two alternatives are available for disposition of any such surplus. Excess funds may be refunded on a *pro rata* basis to participants, or they may be donated to charity. It should be noted that in the case of a deficiency, the Member cannot use official funds to defray participants' costs. Careful planning is thus essential.

If a Member holds conferences on a regular basis, a bank account may be maintained with only enough funds from any surplus to cover bank charges and fees. This avoids the multiple costs that would be incurred in closing and reopening accounts. However, maintenance of such accounts at more than a minimum level might create at least the appearance of impropriety and would be inconsistent with the spirit of the Rule XLV prohibition of unofficial office accounts. Thus, any surplus from a conference over that necessary to keep an account open should be promptly refunded, donated to charity, or disposed of in a manner that would not result in any personal or official benefit. This is the only exception of this nature which the Committee has approved to Rule XLV.

Support for Commercial Enterprises. Members and employees of the House are frequently approached by individuals or organizations seeking assistance for business undertakings. Obtaining information for constituents regarding government contracts and services, as well as helping them deal with government regulations, is an important aspect of a Member's representational duties. In providing such services, care should be exercised "[n]ever to discriminate unfairly by the dispensing of special favors." [21] Thus, Members or employees should undertake for one individual or business no more than they would be willing to do for others similarly situated. Members and staff should also avoid becoming too closely affiliated with a particular enterprise, to prevent any appearance that a benefit is accruing to their interest "by virtue of influence improperly exerted" from a position in the Congress.[22]

The prohibition against use of House resources to support unofficial undertakings also clearly applies to support of business endeavors. Thus, an outside entity should never be permitted to use congressional stationery to promote a commercial or other unofficial endeavor. When responding to requests for support, communications should be drafted so that they do not lend themselves to misinterpretation as an official endorsement from the Congress, consistent with Rule XLIII, clause 11. Other considerations include restrictions on mailing commercial materials under frank and limitations on the display or distribution of commercial materials in House office buildings.[23]

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[21] Code of Ethics for Government Service, *supra*, at para. 5.

[22] See, House Rule XLIII, cl. 3.

Mailing Lists. Regulations of the Committee on House Administration provide that expenses incurred in the procurement, compilation, and updating of mailing lists of residents of a Member's district may be reimbursed from the Official Expenses Allowance. However, such lists—procured, compiled, maintained, or produced with appropriated funds—can be used only to support the conduct of official and representational duties. No name or address taken from any such list may be affixed to an item designed for mailing, unless the item bears the Member's frank.[24]

On occasion a Member's publicized involvement in legislation or an issue of national concern will generate significant correspondence from outside the district. Such mail may strain the Member's official resources. The names gathered may also comprise a mailing list that would be potentially valuable to organizations outside the Congress. However, either permitting a private organization to respond to letters received by a Member in an official capacity or providing outside groups access to an official mailing list would violate House rules and Committee on House Administration regulations. Another Member's office is not considered an outside organization. Thus, if Members are unable or unwilling to respond to nonconstituent inquiries, they could refer the correspondence to another Representative for response.

Unofficial computerized lists—whether political or for another purpose—may *not* be maintained using House facilities. Further, using such a computerized list at no cost would be inconsistent with either Rule XLIII, clause 6, restricting use of campaign resources to campaign purposes, or Rule XLV, prohibiting outside subsidy of official activities. However, Members may purchase a mailing list from a political organization, including their own campaign committees, at fair market value, *provided* the list was available on the same terms to *any* other organization that desired to purchase it. For the purchase to be reimbursable from official allowances, it would have to meet the criteria ordinarily attendant to such expenses.[25] In addition, the contents of any computer tape used officially would have to be purged of any campaign or politically related data.

The rules should not be technically interpreted to infringe upon a Member's ability to communicate with constituents. Thus, according to this Committee's consistent advisement, Members can receive a membership list, set of labels, or names from organizations operating in their districts if those lists, labels, or names either form the basis for an official mailing or are added to the Member's data base with the organization's permission. In either instance, a list could not be available exclusively to the Member but would have to be available on similar terms to others.

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[23] See, Regulation No. 3, Rules and Regulations Governing House Office Buildings, at p. 2.25 of *Congressional Handbook, supra.*

[24] *Id.*, p. 2.57, para. 13.

[25] The thrust of Committee on House Administration regulations is that expenditures, not otherwise prohibited, must be for ordinary and necessary business expenses in support of official and representational duties to the Member's district. See, generally, *Congressicnal Handbook*, chapter 2.

Appendix to Chapter 10

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT ADVISORY OPINION NO. 5 ISSUED APRIL 4, 1979

General interpretation of House Rule XLIII, Clause 11

REASON FOR ISSUANCE

The Committee has received a number of inquiries concerning the application of House Rule XLIII, clause 11, to specific factual situations. This advisory opinion is issued to provide a general interpretation of the rule for the guidance of Members and interested parties.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 11, adopted on January 15, 1979, provides as follows:

> A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "official business," or any combination of words thereof, on any letterhead or envelope.

This addition to the Code of Official Conduct took effect upon adoption. The primary purpose of clause 11 is to prohibit Members from authorizing private organizations to use a facsimile of their congressional stationery to solicit contributions or political support in a direct mail appeal. Such use of congressional letterhead by non-House groups is clearly intended to convey the impression that the solicitation is endorsed by the Congress or is related to the official business of the Member who signs the letter. In adopting clause 11, the House has determined that the use of congressional letterhead facsimiles by private organizations is a deliberate misrepresentation which reflects discredit upon the House of Representatives.

Rule XLIII, clause, 11 generally would prohibit a Member from authorizing a non-House individual or group to use that Member's congressional stationery, or any letterhead that purports to be an official communication from the Congress in any mailing paid for with non-appropriated funds. This prohibition would apply to any letterhead designed in such a manner as to convey the impression that the letter is an official communication. The Committee emphasizes that Rule XLIII, clause 2 directs Members "to adhere to the spirit and the letter of the Rules of the House of Representatives . . ." Therefore, since clause 11 is intended to prohibit solicitations by private interest groups on facsimiles of congressional stationery, it would appear to be a violation of the spirit of that rule if a Member authorized a non-House group to use letterhead that did not contain the words prohibited by clause 11, but which was designed to convey the impression that it is an official communication from the Congress. For example, letterhead which purports to be an official communication by containing a Member's committee assignments, office address, and the "congressional seal" would be contrary to the spirit of clause 11. The Committee notes in this regard that title 18 of the United States Code, section 713, specifically prohibits use of the United States seal for the purpose of conveying a false impression of sponsorship by the United States Government.

The clause 11 prohibition is not intended in any way to restrict a Member's communication with the public or his right to lend his name to any organization or interest group. The rule imposes no restriction on a Member's freedom to sign a fund-raising appeal or other solicitation of political support on a non-House group's own letterhead, and be identified as a Member of Congress. Similarly, a Member's name and title may apear in the letterhead of a non-House organization (e.g., if the Member serves in an official capacity or honorary position with that organization), provided that the letterhead does not purport to be an official communication from the Congress.

The terms "non-House individual group, or organization" as used in the rule would not extend to a Member's principal campaign committee. The Committee understands that the clause 11 prohibition on lending congressional letterhead to private groups was not intended to prohibit a Member from using a facsimile of official stationery in fund-raising activities for his own campaign. This interpretation is based on the debate in the Democratic Caucus which recommended adoption of clause 11 on December 6, 1978, and on the legislative history on a similar amendment that was offered to the Ethics in Government Act during the 95th Congress (see *Congressional Record*, September 20, 1978, page H10212). It should also be noted that the Senate Select Committee on Ethics issued an advisory opinion imposing comparable prohibitions on use of official stationery by non-Senate groups, and did not apply those prohibitions to a Senator's campaign committee.

The Committee emphasizes again in this regard that the clear intent of clause 11 is to prohibit special interest groups and other private organizations from using congressional letterhead for political solicitations. Such use of congressional stationery facsimiles conveys the false impression that the private group is sponsored or endorsed by the House of Representatives. This is not the case when a Member, strictly on his behalf rather than for a third party, uses a facsimile of his personalized official stationery for campaign fund raising appeals or other political mailings. With respect to campaign solicitations, the Committee notes that such letters must include a notice regarding the availability of campaign reports filed with the Federal Election Commission, as required by title 2 of the United States Code, section 435.* Moreover, with respect to other political mailings, the Committee does not believe that it is improper for a Member to use his congressional letterhead to send, for example, thank-you notes to contributors or other politically-related letters which may not be mailed under the frank. The Committee is confident that use of a Member's personalized congressional letterhead for political mailings on his own behalf would not be misinterpreted as an official communication from the House of Representatives or an endorsement by the Congress. In sum, the abuse of congressional stationery that clause 11 is designed to correct is not present in the case of a Member's campaign committee, nor was the rule intended to prohibit a Member's use of his congressional letterhead for political mailings.

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* 2 U.S.C. §441d(a) now requires that campaign fund solicitations and other candidate political communications clearly state that it has been paid for by the candidate's campaign committee.

The prohibitions of clause 11 also would not apply to the Democratic and Republican Congressional Campaign Committees, nor would it apply to the various informal Member organizations or caucuses composed solely of Members of Congress. These ad hoc Member groups, which are quasi-official in nature, and the party campaign committees would not be considered "non-House organizations" for purpose of Rule XLIII, clause 11.

APPENDICES

TEXTS OF SELECTED RULES, REGULATIONS, AND STATUTES RELATING TO STANDARDS OF CONDUCT

1. HOUSE RULE XLIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House of Representatives the following code of conduct, to be known as the "Code of Official Conduct":

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

4. A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $50 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

5. A Member, officer, or employee of the House of Representatives, shall accept no honorarium for a speech, writing for publication, or other similar activity, from any person, organization, or corporation in excess of the usual and customary value for such services.

6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.

7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events.

8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age or national origin.

10. A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

11. A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States", "House of Representatives", or "Official Business", or any combination of words thereof, on any letterhead or envelope.

As used in this Code of Official Conduct of the House of Representatives—(a) the terms "Member" and "Member of the House of Representatives" include the Resident Commissioner from Puerto Rico and each Delegate to the House; and (b) the term "officer or employee of the House of Representatives" means any individual whose compensation is disbursed by the Clerk of the House of Representatives.

For the purposes of clause 4 of this Code of Official Conduct—

(1) The term "relative" means, with respect to any Member, officer, or employee of the House of Representatives, an individual who is related as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the person reporting.

(2) The term "foreign national" means an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.

2. CODE OF ETHICS FOR GOVERNMENT SERVICE, 72 STAT. PART 2, B 12

Code of Ethics for Government Service

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principals and to country above loyalty to Government persons, party, or department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remumeration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

(Passed July 11, 1958.)

3. HOUSE RULE XLV

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

1. On or after January 3, 1978, no Member may maintain or have maintained for his use an unofficial office account.

2. After the date of adoption of this rule, no funds may be paid into any unofficial account.

3. For purposes of this rule—

(a) the term "unofficial office account" means an account or repository into which funds are received for the purposes of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1954 as ordinary and necessary in the operation of a congressional office, and includes any newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1954; and

(b) the term "Member" means any Member of, Delegate to, or Resident Commissioner in, the House of Representatives.

4. HOUSE RULE XLVI

LIMITATIONS ON THE USE OF THE FRANK

1. Any franked mail which is mailed by a Member under section 3210(d) of title 39, United States Code, shall be mailed at the equivalent rate of postage which assures that such mail will be sent by the most economical means practicable.

2. After December 31, 1977, the total number of pieces of mail which may be mailed as franked mail under section 3210(d) of title 39, United States Code, during any calendar year by a Member entitled to mail franked mail under this subsection may not exceed an amount equal to six multiplied by the number of addresses to which such mail may be delivered, in accordance with paragraph (4) of section 3210(d) of title 39, United States Code, in the area from which such Member was elected. Any mail matter which relates solely to a notice of appearance or a scheduled itinerary of a Member in the area from which such Member was elected shall not count against the limitation set forth in the preceding sentence.

3. Any Member entitled to mail franked mail under section 3210(d) of title 39, United States Code, shall, before making any such mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether such proposed mailing is in compliance with the provisions of such section.

4. Any mass mailing which otherwise is frankable by a Member under the provisions of section 3210(e) of title 39, United States Code, shall not be frankable unless the cost of preparing and printing such mass mailing is defrayed exclusively from funds made available in any appropriations Act.

5. In the case of any Representative in the House of Representatives, other than a Representative at Large, who is a candidate for any statewide public office, any mass mailing shall not be frankable under section 3210 of title 39, United States Code, when the same is delivered to any address which is not located in the area constituting the congressional district from which any such individual was elected.

6. In the case of any Member, any mass mailing shall not be frankable under section 3210 of title 39, United States Code, when the same is mailed less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which such Member is a candidate for public office.

7. For purposes of this rule, the term "Member" means any Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner in the House of Representatives.

5. HOUSE RULE XLVII

LIMITATIONS ON OUTSIDE EARNED INCOME

1. (a) Except as provided by paragraph (b), no Member may, in any calendar year beginning after December 31, 1978, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

(b) In the case of any individual who becomes a Member during any calendar year beginning after December 31, 1978, such Member may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

2. For purposes of clause 1, honoraria shall be attributable to the calendar year in which payment is received.

3. For the purposes of this rule—

(a) The term "Member" means any Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner in the House of Representatives.

(b) The term "honorarium" means a payment of money or any thing of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for purposes of this paragraph any actual and necessary travel expenses incurred by the Member to the extent that such travel expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that they are not paid or reimbursed.

(c) The term "travel expenses" means, with respect to a Member, the cost of transportation, and the cost of lodging and meals while away from his residence or the greater Washington, District of Columbia, metropolitan area.

(d) The term "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered but does not include—

(1) the salary of such Member as a Member;

(2) any compensation derived by such Member for personal services actually rendered prior to the effective date of this rule or becoming such a Member, whichever occurs later;

(3) any amount paid by, or on behalf of, a Member to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such Member from such a plan; and

(4) in the case of a Member engaged in a trade or business in which the Member or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by such Member so long as the personal services actually ren-

dered by the Member in the trade or business do not generate a significant amount of income.

Outside earned income shall be determined without regard to any community property law.

6. HOUSE RULE VIII

DUTIES OF THE MEMBERS

1. Every Member shall be present within the Hall of the House during its sitting, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

2. Pairs shall be announced by the Clerk immediately before the announcement by the Chair of the result of the vote, by the House or Committee of the Whole from a written list furnished him, and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting. However, pairs shall be announced but once during the same legislative day.

3. (a) A Member may not authorize any other individual to cast his vote or record his presence in the House or Committee of the Whole.

(b) No individual other than a Member may cast a vote or record a Member's presence in the House or Committee of the Whole.

(c) A Member may not cast a vote for any other Member or record another Member's presence in the House or Committee of the Whole.

7. OTHER PERTINENT HOUSE RULE PROVISIONS

Rule X, Clauses 1(t)(1), 4(e), and 6(a)—Jurisdiction and Membership of the Committee on Standards of Official Conduct

RULE X

ESTABLISHMENT AND JURISDICITON OF STANDING COMMITTEES

The Committees and Their Jurisdiction

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

* * * * * * * *

Committee on Standards of Official Conduct

(1) Measures relating to the Code of Official Conduct. In addition to its legislative jurisdiction under the preceding provision of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the functions, with respect to recommendations, studies, investigations, and reports which are provided for in clause 4(e), and the functions designated in title I of the Ethics in Government Act of 1978.

* * * * * * * *

Additional Functions of Committees

4. * * *

(e)(1) The Committee on Standards of Official Conduct is authorized; (A) to recommend to the House from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House; (B) to investigate, subject to subparagraph (2) of this paragraph, any alleged violation, by a Member, officer, or employee of the House, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and after notice and hearing, to recommend to the House, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances; (C) to report to the appropriate Federal or State authorities, with the approval of the House, any substantial evidence of a violation, by a Member, officer, or employee of the House, of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation; and (D) to give consideration to the request of any Member, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employee and, with appropriate deletions to assure the privacy of the individual concerned, to publish such opinion for the guidance of other Members, officers, and employees of the House.

(2)(A) No resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, officer, or employee of the House shall be made by the Committee on Standards of Official Conduct, and no investigation of such conduct shall be undertaken by such committee, unless approved by the affirmative vote of a majority of the members of the committee.

(B) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, officer, or employee of the House of Representatives only—

(i) upon receipt of a complaint, in writing and under oath, made by or submitted to a Member of the House and transmitted to the committee by such Member, or

(ii) upon receipt of a complaint, in writing and under oath, directly from an individual not a Member of the House if the committee finds that such complaint has been submitted by such individual to not less than three Members of the House who have refused, in writing, to transmit such complaint to the committee.

(C) No investigation shall be undertaken by the committee of any alleged violation of a law, rule, regulation, or standard of conduct not in effect at the time of the alleged violation.

(D) A member of the committee shall be ineligible to participate, as a member of the committee, in any committee proceeding relating to his or her official conduct. In any case in which a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker of the House shall designate a Member of the House from the same political party as the ineligible member of the committee to act as a member of the committee in any committee proceeding relating to the official conduct of such ineligible member.

(E) A member of the committee may disqualify himself from participating in any investigation of the conduct of a Member, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member of the House from the same political party as the disqualifying member of the committee to act as a member of the committee in any committee proceeding relating to such investigation.

(F) No information or testimony received, or the contents of a complaint or the fact of its filing, shall be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

* * * * * * *

Election and Membership of Committees; Chairman; Vacancies; Select and Conference Committees

6. (a)(1) The standing committees specified in clause 1 shall be elected by the House within the seventh calendar day beginning after the commencement of each Congress, from nominations submitted by the respective party caucuses. It shall always be in order to consider resolutions recommended by the respective party caucuses to change the composition of standing committees.

(2) One-half of the members of the Committee on Standards of Official Conduct shall be from the majority party and one-half shall be from the minority party.

Rule XI, Clause 2, paragraphs (e)(2), (g)(1), (g)(2) and (i)—Committee Records and Meetings

RULE XI

RULES OF PROCEDURE FOR COMMITTEES

* * *

Committee Rules

2. * * *

Committee records

(e) * * *

(2) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access thereto, except that in the case of records in the Committee on Standards of Official Conduct respecting the

conduct of any Member, officer, or employee of the House, no Member of the House (other than a member of such committee) shall have access thereto without the specific, prior approval of the committee.

* * *

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, of each standing committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of the meeting on that day shall be closed to the public: *Provided, however,* That no person other than members of the committee and such congressional staff and such departmental representatives as they may authorize shall be present at any business or markup session which has been closed to the public. This paragraph does not apply to open committee hearings which are provided for by clause 4(a)(1) of Rule X or by subparagraph (2) of this paragraph, or to any meeting that relates solely to internal budget or personnel matters.

(2) Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives. Notwithstanding the requirements of the preceding sentence, a majority of those present, there being in attendance the requisite number required under the rules of the committee to be present for the purpose of taking testimony,

(A) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security or violate clause 2(k)(5) of Rule XI; or

(B) may vote to close the hearing, as provided in clause 2(k)(5) of Rule XI. No Member may be excluded from nonparticipatory attendance at any hearing of any committee or subcommittee, with the exception of the Committee on Standards of Official Conduct, unless the House of Representatives shall by majority vote authorize a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members by the same procedures designated in this subparagraph for closing hearings to the public: *Provided, however,* That the committee or subcommittee may by the same procedure vote to close one subsequent day of hearing except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence and the subcommittees therein may, by the same procedure, vote to close up to five additional consecutive days of hearings.

* * *

Prohibition against committee meetings during five-minute rule

(i) No committee of the House (except the Committee on Appropriations, the Committee on the Budget, the Committee on Rules, the Committee on Standards of Official Conduct, and the Committee on Ways and Means) may sit, without special leave, while the House is reading a measure for amendment under the five-minute rule. For purposes of this paragraph special leave will be granted unless 10 or more Members object.

Rule XI, Clause 4(a)—Privileged Reports

Privileged Reports and Amendments

4. (a) The following committees shall have leave to report at any time on the matters herein stated, namely: The Committee on Appropriations—on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year if reported after September 15 preceding the beginning of such fiscal year; the Committee on the Budget—on the matters required to be reported by such committee under Titles III and IV of the Congressional Budget Act of 1974; the Committee on House Administration—on enrolled bills, contested election, and all matters referred to it of printing for the use of the House or the two Houses, and on all matters of expenditure of the contingent fund of the House; the Committee on Rules—on rules, joint rules, and the order of business; and the Committee on Standards of Official Conduct—on resolutions recommending action by the House of Representatives with respect to an individual Member, officer, or employee of the House of Representatives as a result of any investigation by the committee relating to the official conduct of such Member, officer, or employee of the House of Representatives.

8. REGULATIONS FOR THE ACCEPTANCE OF DECORATIONS AND GIFTS

(Including Travel or Expenses for Travel, by Members, Officers, or Employees of the House of Representatives from Foreign Governments—House Committee on Standards of Official Conduct)

1. AUTHORITY

The Committee on Standards of Official Conduct is authorized to issue regulations on this subject by 5 U.S.C. §§ 7342(g), 7342(a)(6), as amended by P.L. 95-105, commonly known as the Foreign Gifts and Decorations Act.

2. PURPOSE

The purpose of these regulations is to establish standards for the acceptance and disclosure of decorations, gifts of more than minimal value, and gifts of travel or expenses for travel taking place entirely outside the United States tendered by foreign governments to Members, officers, and employees of the House of Representatives.

3. GENERAL STANDARDS

(a) The United States Constitution (Article I, Section 9, clause 8) prohibits a Federal official from accepting gifts of any kind whatever from a foreign government without the consent of the Congress.

(b) The Foreign Gifts and Decorations Act (5 U.S.C. 7342) prohibits an officer or employee of the Government from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government, and prohibits the acceptance of such gifts other than in accordance with the provisions of that Act as implemented for Members, officers, and employees of the House by these regulations.

(c) Rule XLIII, clause 4, of the Rules of the House of Representatives prohibits a Member, officer, or employee of the House from accepting gifts (other than personal hospitality of an individual or gifts with a fair market value of $50 or less) in any calendar year aggregating over $100 from a foreign national not acting as a representative of a foreign government. Food, lodging, transportation, and entertainment provided on an official basis by a foreign government to Members of the House of Representatives are not subject to the provisions of House Rule XLIII, clause 4, as such matters are deemed controlled by Constitutional and statutory prohibitions.

4. DEFINITIONS

As used in this section and sections 2, 3, 5, and 6 of these regulations:

(a) "Member, officer, or employee of the House of Representatives" includes the spouse of such individual (unless such individual and spouse are separated) or a dependent of such individual (as defined in section 152 of the Internal Revenue Code);

(b) "foreign government" means—

(i) any unit of foreign governmental authority including any foreign municipal, local, State, and national government;

(ii) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (i); and

(iii) any agent or representative of any such unit or such organization, while acting as such;

(c) "decoration" means any order, device, medal, badge, insignia, emblem or award tendered by, or received from a foreign government; and

(d) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

5. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF DECORATIONS

The Congress has consented (5 USC 7342(d)) to the accepting, retaining, and wearing by a Member, officer, or employee of the House of Representatives of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Committee on Standards of Official Conduct.

(a) *Decorations of minimal intrinsic value.*—Decorations presented to Members, officers, or employees of the House tendered by or received from a foreign government may be accepted by such Member, officer, or employee where the intrinsic value of the decoration is of minimal value, without prior approval of the Committee on Standards of Official Conduct. Decorations of minimal intrinsic value are defined as those having a retail value in the United States of $180 or less.

(b) *Decorations of more than minimal intrinsic value.*—Unless acceptance is specifically approved by the Committee on Standards of Official Conduct, decorations of more than minimal value, if not promptly returned, are deemed to have been accepted on behalf of the United States and shall become the property of the United States. Within 60 days after acceptance of such a decoration, the decoration must be turned over to the Clerk of the House of Representatives for disposal; or, with the approval of the Committee on Standards of Official Conduct, deposited with the Committee for official use. At the time such decoration is turned over to the Clerk by a Member, officer, or employee, such individual must file a disclosure statement concerning such decoration with the Committee, detailing information as provided in section 7 of these regulations.

6. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF GIFTS

Congress has consented to the acceptance of certain gifts, or gifts under particular circumstances, from foreign governments by officers or employees of the Government, including Members, officers, and employees of the House:

(a) *Gifts of minimal value.*—Members, officers, and employees of the House may accept gifts of minimal value from foreign governments tendered and received as a souvenir or mark of courtesy. Gifts of minimal value are defined as those having a retail value in the United States of $180 or less.

(b) *Gifts of more than minimal value where refusal may cause offense or embarrassment.*—A Member, officer, or employee may accept tangible gifts of more than minimal value when refusal would be deemed likely to cause offense or embarrassment or otherwise adversely affect United States foreign relations. However, any such tangible gift received and not promptly returned is deemed to have been accepted on behalf of the United States, and upon acceptance becomes property of the United States. Within 60 days after accepting such a gift, the gift must be turned over to the Clerk of the House of Representatives for disposal, or, with the approval of the Committee on Standards of Official Conduct, deposited with the Committee for official use. At the time such gift is turned over to the Clerk by a Member, officer, or employee, such individual must file a disclosure statement concerning such gift with the Committee, detailing information as provided in section 7(a) of these regulations. Intangible gifts of more than minimal value may only be accepted in accordance with section 6(c) and (e) of these regulations.

(c) *Educational scholarship or medical treatment.*—Members, officers, or employees of the House may accept a gift of more than minimal value from a foreign government when the gift is in the nature of an educational scholarship or medical treatment.

(d) *Foreign educational or cultural exchange.*—Acceptance of assistance from a foreign government for participation in foreign exchange or visitors programs by Federal officers or employees is consented to by Congress in certain instances outlined in 22 U.S.C. 2458a, the Mutual Educational and Cultural Exchange Act. Assistance or grants received under that act are not considered "gifts" under these regulations.

(e) *Travel or expenses for travel outside of the United States.*—A Member, officer, or employee of the House may accept gifts of travel or expenses for travel taking place entirely outside of the United States offered by a foreign government when such travel or expenses for travel relate directly to the official duties of the Member, officer, or employee. Gifts of travel or expenses for travel include food, lodging, transportation and entertainment relating to the official duties of the Member, officer, or employee. This provision allows a Member, officer, or employee to take advantage of opportunities such as certain onsite inspection or fact finding while in a foreign country. A spouse or dependent of a Member, officer, or employee of the House may accept such travel or expenses for travel when accompanying the Member, officer, or employee of the House. Such travel or expenses for travel may not be accepted merely for the personal benefit, pleasure, enjoyment or financial enrichment of the individual or individuals involved. The acceptance of any such travel or expenses for travel shall be reported within 30 days after acceptance to the Committee on Standards of Official Conduct, providing information required in section 7(b) of these regulations. For the purposes of these regulations, travel or expenses for travel are deemed accepted upon departure from the donor country.

7. REPORTS AND DISCLOSURE

Any gift provided to a spouse or dependent should be considered to be a gift provided to the Member, officer, or employee and therefore must be disclosed by such Member, officer, or employee.

For the purposes of these regulations, any decoration presented by a foreign government to the spouse or a dependent of a Member, officer, or employee of the House is considered to be presented to the Member, officer, or employee when it is apparent the decoration would not have been offered but for the recipient's relation to the Member, officer, or employee, and therefore must be disclosed by such Member, officer, or employee.

An appraisal of tangible gifts or decorations, if necessary, may be obtained through the Clerk of the House of Representatives.

(a) *Tangible gifts and decorations.*—At the time of depositing a tangible gift or decoration of more than minimal value accepted by a Member, officer, or employee pursuant to section 5(b) or 6(b) of these regulations, the Member, officer, or employee shall report to the Committee the following information:

(i) the name and position of the reporting individual and the recipient;

(ii) a brief description of the gift or decoration and the circumstances justifying acceptance;

(iii) the estimated value in the United States at the time of acceptance;

(iv) the date of acceptance of the gift or decoration;

(v) the identity, if known, of the foreign government and the name and position of the individual who presented the gift or decoration;

(vi) disposition or current location of the gift or decoration.

(b) *Other gifts.*—Within 30 days after acceptance of gifts of travel pursuant to section 6(e) of the these regulations, the Member, officer, or employee shall report to the Committee the following information:

(i) the name and position of the reporting individual;

(ii) a brief description of the gift and the circumstances justifying acceptance; and

(iii) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

8. PUBLIC INSPECTION

Reports filed under these regulations as promulgated under 5 U.S.C. 7342 shall be maintained by the Committee of Standards of Official Conduct and made available for public inspection at reasonable hours. Not later then January 31, 1979, and January 31 of each succeeding year, the Committee on Standards of Official Conduct will compile a listing of all statements filed during the preceding year and will transmit such listing to the Secretary of State for publication in the Federal Register.

Reports filed with the Committee under these regulations will be maintained for public inspection for a period of 7 years following transmittal to the Secretary of State.

9. TITLE I, ETHICS IN GOVERNMENT ACT OF 1978

(P.L. 95-521, as amended by Public Laws 96-19, 97-51, and 98-150)

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

COVERAGE

SEC. 101. (a) Each Member in office on May 15 of a calendar year shall file on or before May 15 of that calendar year a report containing the information as described in section 102(a).

(b)(1) Any individual who is an officer or employee of the legislative branch described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a) if such individual is or will be such an officer or employee on such May 15.

(2) Any individual whose employment as an officer or employee described in subsection (e) is terminated in any calendar year may be required—

(A) under the rules of the House of Representatives, if such individual would, but for such termination, file a report with the Clerk pursuant to section 103(a), or

(B) under the rules of the Senate, if such individual would, but for such termination, file a report with the Secretary pursuant to section 103(b),

to file a financial disclosure report covering (i) that part of such calendar year during which such individual was employed as such an officer or employee, and (ii) the preceding calendar year if the report required by paragraph (1) covering that calendar year has not been filed.

(c) Within thirty days of assuming the position of an officer or employee described in subsection (e) an individual other than an individual who was employed in the legislative branch immediately before he assumed such position, shall file a report containing the information as described in section 102(b) unless the individual has left another position described in subsection (e) within thirty days prior to assuming his new position. The provisions of the preceding sentence shall not apply to an individual who, as determined by the designated committee of the Senate or the designated committee of the House, as appropriate, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if he performs the duties of his office or position for more than sixty days in a calendar year, the report required by the preceding sentence shall be filed within fifteen days of the sixtieth day. This subsection shall take effect on January 1, 1979.

(d) Within thirty days of becoming a candidate in a calendar year for any election for the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(e) The officers and employees referred to in subsections (b) and (c) are—

(1) each officer or employee of the legislative branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule; and

(2) at least one principal assistant designated for purposes of this section by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule.

For the purposes of this chapter, the legislative branch includes the Architect of the Capitol, the Botanic Gardens, the Congressional

Budget Office, the Cost Accounting Standards Board, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of the Attending Physician, National Commission on Air Quality, and the Office of Technology Assessment.

(f) Reasonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary and by the designated committee of the House of Representatives with respect to those filing with the Clerk but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

(g) Notwithstanding the dates specified in subsection (d) of this section, an individual who is a candidate in calendar year 1978 shall file the report required by such subsection not later than November 1, 1978, except that a candidate for the Senate who has filed a report as of such date pursuant to the Rules of the Senate need not file the report required by subsection (d) of this section.

(h) The designated committee of the House of Representatives, or the designated committee of the Senate, as the case may be, may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position for less than one hundred and thirty days in a calendar year, but only if such committee determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source including speeches, appearances, articles, or other publications, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, interest, rent, and capital gains, received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such items or income is within:

(i) not more than $100,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,
(iv) greater than $5,000 but not more than $15,000,
(v) greater than $15,000 but not more than $50,000,
(iv) greater than $50,000 but not more than $100,000, or
(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5 000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse;

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description the date, and category of value of any purchase, sale, or ex-

change during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternity, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government services; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (c) and (d) of section 101 shall include a full and complete statement with respect to the information required by—

(1) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(2) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(3) paragraph (6) and, in the case of reports filed under section 101(c), paragraph (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(c)(1) The categories for reporting the amount of value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

(A) not more than $5,000;
(B) greater than $5,000 but not more than $15,000;
(C) greater than $15,000 but not more than $50,000;
(D) greater than $50,000 but not more than $100,000;
(E) greater than $100,000 but not more than $250,000; and
(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is

computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(d)(1) Except as provided in the last sentence of this paragraph, each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individuals as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gifts received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(C) In the case of any reimbursements received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a) and (b) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

But such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party.

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(B)(1) of this section but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 3 (a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts; and "supervising ethics office" means the designated committee of the House of Representatives for those who file the reports required by this title with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) The executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (c)(1) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (c)(1) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of assets of the trust at the time of such dissolution and the category of value under subsection (c) of this subsection of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 104, and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection, or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) and (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(f) Political campaign funds, including receipts and expenditures, need not be included in any report filed pursuant to this title.

(g) A report filed pursuant to subsection (a) or (b) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not a Member or an officer or employee of the Federal Government.

FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY

SEC. 103. (a) The reports required by section 101 of Representatives, Delegates to Congress, the Resident Commissioner from Puerto Rico, officers and employees of the House, candidates seeking election to the House, and officers and employees of the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Government Printing Office, and the Library of Congress shall be filed with the Clerk.

(b) The reports required by section 101 of Senators, officers and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, National Commission on Air Quality, and the Office of the Attending Physician shall be filed with the Secretary.

(c) A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971, (2 U.S.C. 439(a)) of the State represented by the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(d)(1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the designated committee of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the designated committee of the Senate.

(e) In carrying out their responsibilities under this title, the Clerk and the Secretary shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(f) In order to carry out their responsibilities under this title, the designated committee of the House of Representatives, and the designated committee of the Senate, shall develop reporting forms and may promulgate rules and regulations.

ACCESSIBILITY OF REPORTS

SEC. 104. (a) Except as provided in the second sentence of this subsection, within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Clerk to any person upon request.

(b) Except as provided in the second sentence of this subsection, within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Secretary to any person upon request.

(c)(1) Notwithstanding subsections (a) and (b), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation, and address;

(B) the name and address of any person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(2) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primairly benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(d) and was not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member unless needed in an ongoing investigation.

(e)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

REVIEW AND COMPLIANCE PROCEDURES

Sec. 105. (a) The designated committee of the House of Representatives and the designated committee of the Senate shall establish procedures for the review of reports sent to them under section 103(d)(1) and section 103(d)(2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) In order to carry out their responsibilities under this title the designated committee of the House of Representatives and the designated committee of the Senate, have power, within their respective jurisdictions, to render any advisory opinion interpreting this title, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom a public advisory opinion is rendered in accordance with this subsection, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of the advisory opinion, acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any sanction provided in this title.

FAILURE TO FILE OR FALSIFYING REPORTS

Sec. 106. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000. No action may be brought under this section against any individual with respect to a report filed by such individual in calendar year 1978 pursuant to section 101(d).

DEFINITIONS

Sec. 107. For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust:

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfa-

ther or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events;

(E) consumable products provided by home-State businesses to a Member's office for distribution; or

(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971;

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaugher and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken

action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a));

(10) "Clerk" means the Clerk of the House of Representatives;

(11) "Secretary" means the Secretary of the Senate;

(12) "Member" means a United States Senator, a Representative in Congress, a delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "election" means (A) a general, special, primary, or runoff election, or (B) a convention or caucus of a political party which has authority to nominate a candidate;

(14) "officer or employee of the House" means any individual, other than a Member, whose compensation is disbursed by the Clerk;

(15) "officer or employee of the Senate" means an individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary; and

(16) "designated committee of the House of Representatives" and "designated committee of the Senate" means the committee of the House or Senate, as the case may be, assigned responsibility for administering the reporting requirements of this title.

OTHER LAWS

SEC. 108. The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of holding the office of Member or candidacy for Federal office or employment by the United States Government.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 109. (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted, whether a governmental or nongovernmental unit should perform the audits, and under whose supervision.

HOUSE RULE XLIV

FINANCIAL DISCLOSURE

1. A copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 shall be sent by the Clerk within the seven-day period beginning the date on which the report is filed to the Committee on Standards of Official Conduct. By July 1 of each year, the Clerk shall compile all such reports sent to him by Members within the period beginning on January 1 and ending on May 15 of each year and have them printed as a House document, which document shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the House as it pertains to Members, officers, and employees of the House of Representatives.

10. TITLE 2, UNITED STATES CODE, OTHER PROVISIONS

2 U.S.C. sec. 31-1

§ 31-1. Honoraria Limits

For the purposes of this section—

(1) "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1954;

(2) "honorarium" means a payment of money or anything of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for the purposes of this section any actual and necessary travel expenses, incurred by the Member, and spouse or an aide to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed;

(3) "Member" means a United States Senator, a Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner from Puerto Rico; and

(4) "travel expenses" means with respect to a Member, and spouse or an aide, the cost of transportation, and the cost of lodging and meals while away from his or her residence or the metropolitan area of Washington, District of Columbia.

(b)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), on and after January 1, 1984, a Member shall not accept honoraria which are attributable to any calendar year and total more than the amount that is equal to 40 percent of the aggregate salary paid to such Member for service as a Member during such calendar year.

(2) An individual who becomes a Member on a date after the first day of a calendar year shall not accept honoraria which are attributable to the remaining portion of that calendar year on and after the date such individual becomes a Member and total more than the amount that is equal to 40 percent of the aggregate salary paid to the Member for service as a Member during such calendar year.

(3) For the purposes of this subsection, an honorarium shall be attributable to the period or calendar year in which payment is received.

(c) Any honorarium, or any part thereof paid by or on behalf of a Member to a charitable organization shall be deemed not to be accepted for the purposes of subsection (b).

(d) Notwithstanding any other provision of law, in the case of a Member who is serving in the office or position of Senator, President pro tempore of the Senate, Majority Leader of the Senate, or Minority Leader of the Senate during a calendar year, the annual rate of pay that is paid to such Member for such service shall not be less than the annual rate of pay payable for such position on December 17, 1982, increased by 15 percent and rounded in accordance with section 5318 of title 5, United States Code.

(e) The Commission on Executive, Legislative, and Judicial Salaries shall include in the first report required to be submitted by it after the date of the enactment of this Act a recommendation for an appropriate salary for Members, which recommendation shall assume a prohibition on the receipt of honoraria by Members.

(f) Subsection (d) of this section shall take effect with respect to service as a Member performed on or after July 1, 1983.

(Pub. L. 98-63, § 908, July 30, 1983, 97 Stat. 337, 338, as amended by Pub. L. 99-190, § 137, Dec. 19, 1985, 99 Stat. 1323.)

2 U.S.C. sec. 86

§ 86. Division of Salaries of Employees of House of Representatives

It shall not be lawful to appoint or employ in any position under the House of Representatives more than one person at any one time, or to require or permit any such persons to divide with another any portion of his salary or compensation while so employed.

(Mar. 3, 1901, c. 830, § 1, 31 Stat. 968.)

2 U.S.C. sec. 87

§ 87. Requiring or Permitting Employees of House of Representatives To Sublet Duties

It shall not be lawful to require or permit any person in the employ of the House of Representatives to sublet to another the discharge of any portion of the duties of the position to which he is appointed.

(Mar. 3, 1901, c. 830, § 1, 31 Stat. 968.)

2 U.S.C. sec. 101

§ 101. Subletting duties of employees of Senate or House of Representatives

No employee of Congress, either in the Senate or House, shall sublet to, or hire, another to do or perform any part of the duties or work attached to the position to which he was appointed.

(Mar. 2, 1895, c. 177, § 1, 28 Stat. 771.)

2 U.S.C. sec. 439a

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

2 U.S.C. sec. 441i

§ 441i. Acceptance of excessive honorariums—Prohibited practices

(a) No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article.

(b) Any honorarium, or any part thereof, paid by or on behalf of an elected or appointed officer or employee of any branch of the Federal Government to a charitable organization shall be deemed not to be accepted for the purposes of this section.

(c) For purposes of determining the aggregate amount of honorariums received by a person during any calendar year, amounts returned to the person paying an honorarium before the close of the calendar year in which it was received shall be disregarded.

(d) For purposes of paragraph (2) of subsection (a) of this section, an honorarium shall be treated as accepted only in the year in which that honorarium is received.

(As amended Pub. L. 98-63, section 908(g), July 30, 1983, 97 Stat. 338).

11. TITLE 5, UNITED STATES CODE, PROVISIONS

5 U.S.C. sec. 557(d)

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

* * * * * * *

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merit of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387; Pub. L. 94-409, § 4(a), Sept. 13, 1976, 90 Stat. 1246.)

5 U.S.C. sec. 3110

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) "relative" means, with respect to a public offical, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

(Pub. L. 90-206, Title II, § 221(a). Dec. 16, 1967, 81 Stat. 640, as amended by Pub. L. 95-454, Title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

5 U.S.C. sec. 3303

§ 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character of residence of the applicant.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418.)

5 U.S.C. sec. 5533

§ 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsection (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds $7,724 a year * ($10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, "gross pay" means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermitent work in addition to

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* The limit on dual pay is adjusted annually by the Clerk of the House in accordance with 2 U.S.C. § 60a-2; the amount was $17,586 per year as of Jan. 1987.

his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(B) under the Architect of the Capitol;

(6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and

(7) pay within the purview of any of the following statutes:

(A) section 162 of title 2;

(B) section 23(b) of title 13;

(C) section 327 of title 15;

(D) section 907 of title 20;

(E) section 873 of title 33;

(F) section 631 or 631(a) of title 31, District of Columbia Code; or

(e)(1) This section does not apply to an individual employed under sections 174j-1 to 174j-7 or 174k of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.

5 U.S.C. sec. 7342

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from a foreign government;

(4) "decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) "minimal value" means a retail value in the United States at the time of acceptance of $100* or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, 'minimal value' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 8-year period; and

(B) regulations of an employing agency may define 'minimal value' for its employees to be less than the value established under this paragraph; and

(6) "employing agency" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)B shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate; except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d) and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

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* $180 as of January 1, 1987.

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or usually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2)

and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

(i) The President shall direct all Chiefs of the United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by an employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(2) The amendment made by paragraph (1) of this subsection shall take effect on January 1, 1978.

(Added Pub. L. 90-83, § 1(45)(C), Sept. 11, 1967, 81 Stat. 208, and amended Pub. L. 95-105, Title V, § 515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub. L. 95-105, Title VII, § 712 (a)-(b), Oct. 7, 1978, 92 Stat. 994(1).

12. TITLE 18, UNITED STATES CODE, PROVISIONS

18 U.S.C. sec. 201

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the

District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been to selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude, in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness

upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined not more than three times the monetary equivalent of the thing of value, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistance incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(As amended Pub. L. 91-405, Title II, § 204(d)(1), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99-646, § 46(a)-(e), Nov. 10, 1986, 100 Stat. 3601-3604.)

18 U.S.C. sec. 203

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts or agrees to receive or accept any compensation for any services rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(b) at a time when such person is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia.

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, or employee;

shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(b) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1121 and amended Pub. L. 91-405, Title II, § 204(d)(2), (3), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99-646, § 47(a), Nov. 10, 1986, 100 Stat. 3604.)

18 U.S.C. sec. 204

§ 204. Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit, shall be fined not more than $10,000 or imprisoned for not more than two years, or both and shall be incapable of holding any office of honor, trust, or profit under the United States.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122 and amended Pub. L. 91-405, title II, § 204(d)(2), Sept. 22, 1970, 84 Stat. 853; Pub. L. 97-164, title I, § 147, Apr. 2, 1982, 96 Stat. 45.)

18 U.S.C. sec. 205

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided,* That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122.)

18 U.S.C. sec. 211

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

(June 25, 1948, c. 645, 62 Stat. 694, § 211, formerly § 215, amended Sept. 13, 1951, c. 380, 65 Stat. 320, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(b), 76 Stat. 1125.)

18 U.S.C. sec. 286

§ 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, c. 645, 62 Stat. 698.)

18 U.S.C. sec. 287

§ 287. False, fictitious or fraudulent claims

Whoever makes or represents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.*

(June 25, 1948, c. 645, 62 Stat. 698.)

18 U.S.C. secs. 431-433

§ 431. Contracts by Member of Congress

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indiretly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined not more than $3,000.

All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States or any agency thereof, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department or agency under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties for the recovery of the money so advanced.

(June 25, 1948, c. 645, 62 Stat. 702; Oct. 31, 1951, c. 655, § 19, 65 Stat. 717.)

§ 432. Officer or employees contracting with Member of Congress

Whoever, being an officer or employee of the United States, on behalf of the United States or any agency thereof, directly or indirectly makes or enters into any contract, bargain, or agreement, with any Member of or Delegate to Congress, or any Resident Commissioner, either before or after he has qualified, shall be fined not more than $3,000.

(June 25, 1948, c. 645, 62 Stat. 702.)

§ 433. Exemptions with respect to certain contracts

Sections 431 and 432 of this title shall not extend to any contract or agreement made or entered into, or accepted by any incorporated company for the general benefit of such corporation; nor to the purchase or sale of bills of exchange or other property where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to advances, loans, discounts, purchase or repurchase agreements, extensions, or renewals thereof, or acceptances, releases or substitutions of security thereof or other contracts or agreements made or entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the

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* Pub. L. 99-145, Title IX, § 931(a), Nov. 8, 1985, 99 Stat 699, provides that, with respect to claims made on or after that date:

"Notwithstanding sections 287 and 3623 of title 18, United States Code, the maximum fine that may be imposed under such section for making or presenting any claim upon or against the United States related to a contract with the Department of Defense, knowing such claim to be false, fictitious, or fraudulent, is $1,000,000."

Home Owners Loan Act of 1933, the Farmer's Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

Any exemption permitted by this section shall be made a matter of public record.

(June 25, 1948, c. 645, 62 Stat. 703; Oct. 4, 1961, Pub. L. 87-353, § 3(*o*), 75 Stat. 774.)

18 U.S.C. sec. 597

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditures in consideration of his vote or the withholding of his vote—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

18 U.S.C. sec. 598

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

18 U.S.C. sec. 599

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

18 U.S.C. sec. 600

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(As amended Oct. 2, 1976, Pub. L. 94-453, § 3, 90 Stat. 1517.)

18 U.S.C. sec. 601

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than $10,000, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendment to the Constitution of the United States or of any State and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(As amended Oct. 2, 1976, Pub. L. 94-453, § 1, 90 Stat. 1516.)

18 U.S.C. sec. 602

§ 602. Solicitation of political contributions.

It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commission to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 772; amended by P.L. 96–187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367.)

18 U.S.C. sec. 603

§ 603. Making political contributions.

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(June 25, 1948, ch. 645, 62 Stat. 772; Oct. 31, 1951, ch. 655, § 20(b), 65 Stat. 718; amended by P.L. 96–187, title II, § 201(a)(4), Jan. 8, 1980, 93 Stat. 1367.)

18 U.S.C. sec. 604

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 772.)

18 U.S.C. sec. 605

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 722.)

18 U.S.C. sec. 606

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, c. 645, 62 Stat. 722.)

18 U.S.C. sec. 607

§ 607. Place of solicitation

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or on any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(June 25, 1948, ch. 645, 62 Stat. 722; amended by P.L. 96-187, title II, § 201(a)(5) Jan. 8, 1980, 93 Stat. 1367-68.)

18 U.S.C. sec. 641

§ 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(June 25, 1948, c. 645, 62 Stat. 725.)

18 U.S.C. sec. 713

§ 713. Use of likenesses of the Great Seal of the United States

(a) Whoever knowingly displays any printed or other likeness of the great seal of the United States, or of the seals of the President or the Vice President of the United States, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsoring or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined not more than $250 or imprisoned not more than six months, or both.

(b) Whoever, except as authorized under regulations promulgated by the President and published in the Federal Register, knowingly manufacturers, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seals of the President or Vice President, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined not more than $250 or imprisoned not more than six months, or both.

(c) A violation of subsection (a) or (b) of this section may be enjoined at the suit of the Attorney General upon complaint by any authorized representative of any department or agency of the United States.

(Pub. L. 89-807, § 1(a), Nov. 11, 1966, 80 Stat. 1525, as amended by Pub. L. 91-651, § 1, Jan. 5, 1971, 84 Stat. 1940.)

18 U.S.C. sec. 1001

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, c. 645, 62 Stat. 749.)

18 U.S.C. sec. 1719

§ 1719. Franking privilege

Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than $300.

(June 25, 1958, c. 645, 62 Stat. 783.)

13. TITLE 22, UNITED STATES CODE, PROVISION

22 U.S.C. sec. 2548a

§ 2548a. Mutual Educational and Cultural Exchange Act

GRANTS AND OTHER FOREIGN GOVERNMENT ASSISTANCE; FAMILY OR HOUSEHOLD EXPENSE ASSISTANCE PROHIBITED; "FEDERAL EMPLOYEE" DEFINED

(a)(1) Congress consents to the acceptance by a Federal employee of grants and other forms of assistance provided by a foreign government to facilitate the participation of such Federal employee in a cultural exchange—

(A) which is of the type described in section 2452(a)(2)(i) of this title,

(B) which is conducted for a purpose comparable to the purpose stated in section 2451 of this title, and

(C) which is specifically approved by the Director of the International Communication Agency for purposes of this section;

but the Congress does not consent to the acceptance by any Federal employee of any portion of any such grant or other form of assistance which provides assistance with respect to any expenses incurred by or for any member of the family or household of such Federal employee.

(2) For purposes of this section, the term "Federal employee" means any employee as defined in subparagraphs (A) through (E) of section 7342(a)(1) of Title 5, but does not include a person described in subparagraph (F) of such section.

FOREIGN GRANTS AND OTHER ASSISTANCE NOT GIFTS FOR PURPOSES OF SECTION 7342 OF TITLE 5

(b) The grants and other forms of assistance with respect to which the consent of Congress is given in subsection (a) of this section shall not constitute gifts for purposes of section 7342 of Title 5.

REGULATIONS

(c) The Director of the International Communication Agency is authorized to promulgate regulations for purposes of this section.

(Pub. L. 87-256, § 108A, as added Pub. L. 94-350, Title I, § 111, July 12, 1976, 90 Stat. 825, and amended 1977 Reorg. Plan No. 2, § 7(a)(2), 42 F.R. 62461, 91 Stat. 1637.)

14. TITLE 26, UNITED STATES CODE, PROVISIONS

26 U.S.C. secs. 4941 and 4946

§ 4941. Taxes on self-dealing

(a) INITIAL TAXES.—

(1) ON SELF-DEALER.—There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) ON FOUNDATION MANAGER.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) ADDITIONAL TAXES.—

(1) ON SELF-DEALER.—In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) ON FOUNDATION MANAGER.—In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) SPECIAL RULES.—For purposes of subsections (a) and (b)—

(1) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) $10,000 LIMIT FOR MANAGEMENT.—With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) SELF-DEALING.—

(1) In general.—For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

(2) Special rules.—For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed $25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702 of title 5, United States Code, for like travel by employees of the United States; and

(H) the leasing by a disqualified person to a private foundation of office space for use by the foundation in a building with other tenants who are not disqualified persons shall not be treated as an act of self-dealing if—

(i) such leasing of office space is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(ii) the execution of such lease was not a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law) at the time of such execution; and

(iii) the terms of the lease (or any renewal) reflect an arm's-length transaction.

(e) Other Definitions.—for purposes of this section—

(1) Taxable Period.—The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the

date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) AMOUNT INVOLVED.—The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) CORRECTION.—the terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(Pub. L. 91-172, Title I, § 101(b), Dec. 30, 1969, 83 Stat. 499, as amended by Pub. L. 94-455, Title XIX, §§ 1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 stat. 1795, 1834; Pub. L. 96-596, § 2(a)(1)(A), (B), (2)(A), (3)(A), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 96-608, § 5, Dec. 28, 1980, 94 Stat. 3553; and Pub. L. 99-234, Title I, § 107(c), Jan. 2, 1986, 99 Stat. 1759.)

§ 4946. Definitions and special rules

(a) DISQUALIFIED PERSON.—

(1) IN GENERAL.—for purposes of this subchapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) SUBSTANTIAL CONTRIBUTORS.—For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2).

(3) STOCKHOLDINGS.—For purposes of paragraphs (1)(C)(i) and (I)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) FOUNDATION MANAGER.—For purposes of this subchapter, the term "foundation manager" means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) GOVERNMENT OFFICIAL.—For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of compensation prescribed for GS-16 of the General Schedule under section 5332 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $15,000 or more, or

(6) a position as personal or executive assistant or secretary to any of the foregoing.

(d) MEMBERS OF FAMILY.—For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(Pub. L. 91-172, Tile I, § 101(b), Dec. 30, 1969, 83 Stat. 515, as amended by Pub. L. 95-227, § 4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22, and Pub. L. 98-369, Title III, § 306(a), July 18, 1984, 98 Stat. 784.)

15. TITLE 31, UNITED STATES CODE, PROVISIONS

31 U.S.C. sec. 1301(a)

§ 1301. Application of appropriations

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(R.S. § 3678.)

31 U.S.C. sec. 3729

§ 3729. Civil liability for false claims

(a) LIABILITY FOR CERTAIN ACTS.—Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

(c) CLAIM DEFINED.—For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.

(Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153.)

31 U.S.C. sec. 3730

§ 3730. Actions for recovery of funds.

(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the

Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the actions was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatment with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

(Pub. L. 99-562, §§3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157.)

16. TITLE 39, UNITED STATES CODE, PROVISIONS

39 U.S.C. sec. 1002

§ 1002. Political recommendations

(a) Except as provided in subsection (e) of this section, each appointment, promotion, assignment, transfer, or designation, interim or otherwise, of an officer or employee in the Postal Service (except a Governor or member of the Postal Rate Commission) shall be made without regard to any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, made by—

(1) any Member of the Senate or House of Representatives (including the Resident Commissioner from Puerto Rico);

(2) any elected official of the government of any State (including the Commonwealth of Puerto Rico) or of any county, city, or other political subdivision of such State or Commonwealth;

(3) any official of a national political party or of a political party of any State (including the Commonwealth of Puerto Rico), county, city, or other subdivision of such State or Commonwealth; or

(4) any other individual or organization.

(b) Except as provided in subsection (e) of this section, a person or organization referred to in clause (1), (2), (3), or (4) of subsection (a) of this section is prohibited from making or transmitting to the Postal Service, or to any other officer or employee of the Government of the United States, any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation. The Postal Service and any officer or employee of the Government of the United States, subject to subsection (e) of this section—

(1) shall not solicit, request, consider, or accept any such recommendation or statement; and

(2) shall return any such written recommendation or statement received by him, appropriately marked as in violation of this section, to the person or organization making or transmitting the same.

(c) A person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation is prohibited from requesting or soliciting any such recommendation or statement from any person or organization except a statement of the type referred to in subsection (e)(2) of this section.

(d) Each employment form of the Postal Service used in connection with any such appointment, promotion, assignment, transfer, or designation shall contain appropriate language in boldface type informing all persons concerned of the provisions of this section. During the time any such appointment, promotion, assignment, transfer, or designation is under consideration, appropriate notice of the provisions of this section printed in boldface type shall be posted in the post office concerned.

(e) The Postal Service or any authorized officer or employee of the Government of the United States may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the Postal Service or such authorized officer or employee, any statement with respect to a person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, if—

(1) the statement is furnished pursuant to a request or requirement of the Postal Service and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person;

(2) the statement relates solely to the character and residence of such person;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Govenment of the United States solely in order to determine whether such person meets the loyalty, suitability, and character requirements for employment with the Government of the United States; or

(4) the statement is furnished by a former employer of such person pursuant to a request of the Postal Service, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person during his employment with such former employer.

(f) The Postal Service shall take any action it determines necessary and proper, including but not limited to suspension, removal from office, or disqualification from the Postal Service, to enforce the provisions of this section.

(g) The provisions of this section shall not affect the right of an officer or employee of the Postal Service to petition Congress as authorized by section 7211 of title 5.

(Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 729; Pub. L. 95–454, Title VII, § 703(c)(5), Oct. 13, 1978, 92 Stat. 1217.)

39 U.S.C. sec. 3210

§ 3210. Franked mail transmitted by the Vice President, Members of Congress, and congressional officials

(a)(1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

(2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.

(3) It is the intent of the Congress that mail matter which is frankable specifically includes, but is not limited to—

(A) mail matter to any person and to all agencies and officials of Federal, State, and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress;

(B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters;

(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public issue, or subject;

(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district offices, or between his district offices;

(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments;

(F) mail matter expressing congratulations to a person who has achieved some public distinction;

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other

person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail—

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes—

(i) greetings from the spouse or other members of the family of such Member or Member-elect unless it is a brief reference in otherwise frankable mail;

(ii) reports on how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect; or

(C) mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

(6)(A) It is the intent of Congress that a Member of, or Member-elect to, Congress may not mail any mass mailing as franked mail—

(i) if the mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member is a candidate for reelection; or

(ii) in the case of a Member of, or Member-elect to, the House who is a candidate for any other public office, if the mass mailing—

(I) is prepared for delivery within any portion of the jurisdiction of or the area covered by the public office which is outside the area constituting the congressional district from which the Member or Member-elect was elected; or

(II) is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member or Member-elect is a candidate for any other public office.

(B) Any mass mailing which is mailed by the chairman of any organization referred to in the last sentence of section 3215 of this title which relates to the normal and regular business of the organization may be mailed without regard to the provisions of this paragraph.

(C) No Member of the Senate may mail any mass mailing as franked mail if such mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election.

(D) The Select Committee on Ethics of the Senate and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take other action as the Committee or the Commission considers necessary and proper for Members and Members-elect to comply with the provisions of this paragraph and applicable rules and regulations. The rules and regulations shall include provisions prescribing the time within which mailings shall be mailed at or delivered to any postal facility and the time when the mailings shall to deemed to have been mailed or delivered to comply with the provisions of this paragraph.

(E) For purposes of this section, the term "mass mailing" means news-letters and similar mailings of more than five hundred pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

(i) which are in direct response to communications from persons to whom the matter is mailed;

(ii) to colleagues in the Congress or to government offícals (whether Federal, State, or local); or

(iii) of news releases to the communications media.

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives and the Senate Legal Counsel, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a)(2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, any authorized person may exercise the franking privilege in the officer's name during the period of the vacancy.

(3) The Vice President, each Member of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House (other than a Member of the House), during the 90-day period immediately following the date on which

they leave office, may send, as franked mail, matter on offical business relating to the closing of their respective offices. The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations, and shall take such other action as the Commission or Committee considers necessary and proper, to carry out the provisions of the paragraph.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a)(4) and (5) of this section.

(d)(1) A Member of Congress may mail franked mail with a simplified form of address for delivery—

(A) within that area constituting the congressional district or State from which he was elected; and

(B) with respect to a Member of the House of Representatives on and after the date on which the proposed redistricting of congressional districts in his State by legislative or judicial proceedings is initially completed (whether or not the redistricting is actually in effect), within any additional area of each congressional district proposed or established in such redistricting and containing all or part of the area constituting the congressional district from which he was elected, unless and until the congressional district so proposed or established is changed by legislative or judicial proceedings.

(2) A Member-elect to the Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or the State from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Any franked mail which is mailed under this subsection shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(5) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations governing any franked mail which is mailed under this subsection and shall by regulation limit the number of such mailings allowed under this subsection.

(6)(A) Any Member of, or Member-elect to, the House of Representatives entitled to make any mailing as franked mail under this subsection shall, before making any mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(B) The Senate Select Committee on Ethics may require any Member of, or Member-elect to, the Senate entitled to make any mailings as franked mail under this subsection to submit a sample or description of the mail matter to the Committee for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(7) Franked mail mailed with a simplified form of address under this subsection—

- (A) shall be prepared as directed by the Postal Service; and
- (B) may be delivered to—
  - (i) each box holder or family on a rural or star route;
  - (ii) each post office box holder; and
  - (iii) each stop or box on a city carrier route.

(8) For the purposes of this subsection, a congressional district includes, in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent.

(f) Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.

(g) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 754; Pub. L. 92-51, § 101 July 9, 1971, 85 Stat. 132; Pub. L. 93-191, § 1(a), Dec. 18, 1973, 87 Stat. 737; Pub. L. 94-177, Dec. 23, 1975, 89 Stat. 1032; Pub. L. 95-521, Title VII, § 714(a), Oct. 26, 1978, 92 Stat. 1884; Pub. L. 97-69, §§ 1-3(a), Oct. 26, 1981, 95 Stat. 1041-1043; Pub. L. 97-273, § 1(1), (2), Sept. 24, 1982, 96 Stat. 1132).

16. TITLE 41, UNITED STATES CODE, PROVISION

41 U.S.C. sec. 22

§ 22. Interest of Member of Congress

In every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. Nor shall the provisions of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933, and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: *Provided*, That such exemption shall be made a matter of public record.

(R.S. § 3741; Feb. 27, 1877, c. 69 § 1, 19 stat. 249; Jan. 25, 1934, c. 5, 48 Stat. 337; June 27, 1934, c. 847, Title V, § 510, 48 Stat. 1264; Aug. 26, 1937, c. 821, 50 Stat. 838.)

INDEX

Page

- Accounting for official allowances:
  - Certification 80, 96
  - Recommended procedure 96
  - Vouchers 96
- Accounts for conference expenses 187
- Adjudications by Federal agencies 167
- Advertisements, personal:
  - Official expenses 94, 109
  - Political expenses 147
- Airline carriers:
  - Gifts from 18
  - Inaugural flights 18, 38–39
- Advisory opinions (see "Committee on Standards of Official Conduct" and "Select Committee on Ethics").
- Allowances (see "official expenses").
- Amendments to financial disclosure statements 126–127, 134–135
- American Bar Association Code of Professional Responsibility 60, 62, 65
- Amusement park, courtesy pass 20
- Appearances of influence 23
- Attorneys (see "law practice").
- Blind Trusts:
  - Assets 125
  - Conflicts of interest 118
  - Disclosure of trusts, generally 121
  - Existing trusts 126
  - Generally 118, 123–124
  - Notification and filings 125–126
  - Prohibitions and enforcement 126
  - Trust instrument requirements 125
  - Trustee 124
- Bribery 23–24, 81, 233–235
- British Broadcasting Corporation 59
- Buy-out arrangements 48, 71
- Campaign activities:
  - By House employees 86–88, 142, 150
  - Finances (see "campaign funds and practices").
  - In Federal buildings 141, 151, 161, 243
  - Overlap with official duties 86, 146–147, 150
  - Use of official facilities for 86, 141, 150
- Campaign contributions (see "campaign funds and finances" and "political contributions").
- Campaign depositories 140
- Campaign finance reports 140
- Campaign funds and finances:
  - Campaign depositories 140
  - Campaign finance reports 140
  - Cash contributions 141
  - Contribution limitations 140
  - Contributions received in House offices 141, 151, 161, 243
  - Corporate contributions 140
  - Excess campaign funds 148–149
  - Federal contractors 140
  - Federal employees 88, 161
  - Foreign nationals 141
  - Generally 139, 151–153, 160–163

Campaign funds and finances—Continued Page
  Labor union contributions 140
  Political action committees, PACs 140
  Principal campaign committee 139
  Public utility holding company 141
  Registration 139
  Reporting 140
  Separate segregated funds 140
  Staff contributions 88
  Use of campaign funds 144–148
    Advertisements 155
    Bona fide campaign purposes 144–146
    Commingling with personal funds 145–146
    Dinner expenses 146
    Discretion of Members 144–146
    Excess funds 148–149
    Holiday greetings 147
    Official expenses 97, 98
    Personal use 144–145
    Town meetings 147, 155–156
Caucuses and Member organizations (see "legislative service organizations," "informal member and staff organizations").
Clerk hire allowance 79–80, 89–90
Code of Ethics for Government Service 9–10, 195
Code of Official Conduct 193–194
Commercial enterprises, involvement in 187–188
Commission on Congressional Mailing Standards 107
Committee on House Administration:
  Legislative Service Organization regulations 94, 181
  Regulations and Accounting Procedures for Allowances and Expenses 79–80, 93
Committee on Standards of Official Conduct:
  Generally 3
  House Rule references 200–204
  Opinions:
    Appeals on behalf of outside groups (No. 5) 189
    Campaign funds for town meeting (No. 6) 155
    Clerk hire of Members (No. 2) 89
    Federal agency communications (No. 1) 175
    Financial disclosure amendments (July 1986 memo) 134
    Political activities of Members and staff (November 1985 letter) 160
    Principal assistants of members (Interp. Ruling No. 1) 131
    Valuation of gifts of transportation (letter of June 11, 1987) 39
Communications with federal agencies (see "federal agency communications").
Compensation for services before Federal agencies 24, 52–54, 236–237
Compensation, outside or additional (see "outside employment and compensation").
Computer services, expenses for 93
Condolences, as franked mail 110
Conduct reflecting creditably on the House 3–7
Conferences and meetings:
  Fees for non-government participants 187
  Substantial participation in, travel for 17, 33–34
Confidential information:
  Investments 117
  Outside compensation 88
  Release of without authorization 117
Conflicts of interest:
  Abstention from voting 127–130
  Disclosure 117–118
  Financial investments 115
  Law practice 60
  Outside employment and compensation 45–46
Congratulations, as franked mail 109
Constituents:
  Constituency services 86
  Franked mail to (see "franking privilege").
  Inquiries to Federal agencies on behalf of 169–170, 175–177

Page

- Contracting with the Federal Government:
  - By Members prohibited 54-56, 239-240, 263-264
  - By employees 56
  - Corporations which include Members 55
  - Exemptions to Member restrictions 55
  - Members as shareholders 55
  - Partnerships including Members 54
- Contributions:
  - Political (see "political contributions").
  - To official activities (see "unofficial office accounts").
- Conviction of Member, legislative activity 8-9
- Corporate political contributions 140
- Corporate travel 17, 33-36
- Country club, honorary membership 20
- Credit Mobilier Corporation 14
- Criminal code provisions 233-245
- Dinner expenses 20
- Direct interest in legislation, defined 19
- Discrimination in employment 81
- District office lease, expenses 93
- Donations by Members 50, 52
- Double billing 94
- Dual government employment 56-57, 228-229
- Dues or assessments paid by Members 94
- Earned income, generally 45-47
- Earned income limitation:
  - Accrual basis 50, 69
  - Business corporations 49, 72-74
  - Close corporations 49-50, 73
  - Family business or firm 49-50, 73-74
  - Generally 47-48, 69, 198-199
  - Honoraria 50-52, 75
  - Partnerships 49
  - Personal service businesses 48, 70-71
  - Unincorporated businesses 49
- Educational expenses:
  - Directly benefiting House 94
  - From foreign governments 21
- Embezzlement 96
- Entertainment, receipt of (see "gifts").
- Ethics in Government Act (see also "financial disclosure") 118-119, 208-222
- Excess campaign funds 148-149
  - Death of Member 149
- Ex parte communications 167-168, 225-226
- Expressions of official sponsorship (see "official sponsorship").
- Fact-finding travel 17-19, 34-36
- False claims 82, 87, 94-97, 238
- False Claims Act 84, 87, 95, 251-256
- False statements 85, 96, 244
- Favors (see "gifts").
- Federal agencies:
  - Communications, generally 167
  - Compensation for services before 24, 52, 170, 236
  - Conferences 187
  - Contracts with 54-56, 239-240, 263-264
  - Ex parte communications 167-168
  - General standards for dealings with 169-170
  - Gratuities for 24
  - Private representation before 24, 52-54, 236-237
  - Recommendations for employment 171-172, 227-228
  - Undue influence, fraud 117, 168-169
  - Unofficial representational activities 52-54
- Federal Election Campaign Act (see "campaign funds and finances").
- Federal employment:
  - Payment to obtain 81-82
  - Political activities or contributions for 81-82
  - Recommendations by Members for 171-172, 227-228

Page

- Financial disclosure:
  - Agreements for future or continuing benefits 123
  - Amendments to statements 126–127,. 134–135
  - Blind trusts 123–126
  - Candidates 119
  - Debt 121
  - Generally 117–118
  - Gifts 122
  - Holdings 120
  - Income 120
  - Liabilities 121
  - Positions 123
  - Principal assistants of Members 119, 131–133
  - Reimbursements 122
  - Spouse and dependents 119
  - Transactions in property and securities 121
- Financial interests:
  - Abstention from voting 127–130
  - Bank stock 116, 128
  - Blind trust 123–126
  - Commercial land development 116–117
  - Conflicts of interest 115
  - Corporations with government contracts 55
  - Disclosure 117–118
  - Disqualification 127–130
  - Divestiture 118
  - Use of office for personal gain 116
- Foreign Gifts and Decorations Act:
  - Regulations 21, 204–208
  - Statute 21, 229–233
- Foreign governments:
  - Acting as agent of 58–29
  - Compensation or "emoluments" from 58
  - Gifts from 20–21
  - Decorations and awards from 21
  - Travel paid by 21
- Foreign Nationals:
  - Campaign contributions 141
  - Gifts from 15
- Former Members, franking privilege 108
- Foundations:
  - Foreign 59
  - Private 59, 246–251
- Franking privilege:
  - Authorization 108
  - Commission on Congressional Mailing Standards 107
  - Committees, use of 108
  - Former Members 108
  - Generally 107, 197, 258–263
  - Guidelines for frankability, summary 109–110
  - Loan of the frank 108
  - Mass mailings 99, 110, 147
  - Newsletters 99, 109
  - Postal patron mail 107, 111
  - Questionnaires 109
  - Responsibility of Members' staffs 108
  - Return mail 108–109
  - Solicitations 110
  - Standards for frankability, generally 109
  - Surviving spouse of Member 108
- Fraud 84–85, 94–97, 238
- Fundraisers:
  - As campaign contributions 21–22, 148
  - Direct mail solicitations 22, 148, 157–159
  - Legal defense fund 23, 148
  - On behalf of a Member by others 22, 148, 159–160
- Gifts:
  - Airline carriers 18, 38–39

Page
Gifts—Continued
  Bribery 23-24
  Charitable events such as celebrity golf tournaments 17
  Conferences and speaking engagements 17, 33-34
  Courtesy pass 20
  Definition 10, 27-30
  Fact-finding tours 17-19, 34-36
  Financial disclosure 24-25, 122
  Foreign governments 20-21, 28
  Foreign nationals 15
  Fundraisers 21-23
  Honorary memberships 20
  Illegal gratuities 24
  Lobbyists 15, 19, 31
  One hundred dollar limit 15
  Personal hospitality 15-16
  Persons with a direct interest in legislation 19, 30-33
  Political action committees 19, 31
  Spouse of Member or employee 19-20, 37-38
  Substantial participation in conferences or meetings 17, 33-34
  Testimonials 21-23
  Tickets:
    To political dinner 20
    To sports events 20
    To theatre 20
  Transportation:
    Conferences and speaking engagements 17, 33-34
    Fact-finding tours 17-19
    To home district 18-36
  Valuation 20, 39-41
Government agencies, services before:
  Advertising 63
  Breach of fiduciary duty 60
  Compensation 24, 52-54, 170
  Law practice 63
  Partnership 53
  Salary from firm 53
Government agencies, services from:
  Not considered as gifts 16, 28
  Not considered unofficial office accounts 99, 102, 186-187
Government in the Sunshine Act 169
Golf tournaments, charitable celebrity, expenses for 17
Great seal of the United States 184-185, 244
Holiday greetings:
  Expenses for, not official 94
  Nonfrankability of 110
  Political expense 147
Honoraria:
  Award not an honorarium 51
  Campaign contribution not an honorarium 52
  Defined 51
  Donated to charity 50, 52
  Earned income 50, 75
  Federal Election Commission Regulations 51
  Generally 50-52
  Gift not an honorarium 51
  Limit, House rules 51
  Limit, statutory, per event 51, 225
  Limit, statutory, per year 50-51, 223
  Stipend not honorarium 51
  Usual and customary value 51
Illegal gratuity 24, 170-171
Impoundment 171
Inaugural flights 18, 38-39

Page

- Income limitation (see "earned income limitation").
- Income, outside or additional (see "outside employment and compensation").
- Indirect gift 19-20, 37-38
- Informal Member and staff organizations 182-183
- In-kind services provided to House offices 97-99, 101-103
- Inquiries to Federal agencies as to status of proceeding 169
- Inspection tours 17-19, 34-36
- Intern programs 98, 102-103
- Intervention in administrative proceedings (see "Federal agency communications").
- Itinerary of Member, franking 111
- Investments (see "financial interests and investments").
- Kickbacks 82-83
- Korean influence investigation 5
- Labor unions, campaign contributions 140
- Law practice:
  - ABA Code of Professional Responsibility 60, 62, 65
  - Buy-out arrangements 48
  - Conflicts of interest 60
  - Dual partnerships 64-65
  - Facade practice 62
  - Federal practice 52-54, 63-66, 236
  - Federal practice by partner or firm 63-66
  - Generally 60-66, 71-72
  - Income limitation 61, 65
  - Name in firm 61-62
  - Senate rule 61
  - Statutory restrictions 61
- Legal defense fund 23, 148
- Legislative service organizations (LSOs):
  - Generally 94, 181-182
  - Involvement with private organizations 185-186
- Lobbyists, gifts from 15, 19, 31
- Mail fraud 83
- Mailing lists 188
- Mass mailings:
  - Expenses for 99, 144, 147
  - Franking 99, 110
  - Postal patron mail 107, 111
- Meeting places, private 98, 102
- Merit system 172
- Nepotism 80-81, 226-227
- Newsletters 99
- Office accounts (see "unofficial office accounts").
- Office equipment expenses 93
- Official allowances and resources:
  - Accounting procedure recommended 96
  - Allowance for official expenses 93
  - Committee on House Administration regulations 79-80, 93
  - False claims 94-97
  - Fraud 94-97
  - Generally 79, 93-95
  - Political use 88, 150-151
  - Travel expenses 93
  - Unofficial office accounts 97-99
- Official expenses 97-103
- Official sponsorship, expressions or symbols indicating 183-185
- Outside employment and compensation:
  - Agent of foreign principal 58-59
  - Confidential information 88
  - Conflicts of interest 45-46
  - Contracting with the Federal Government 54-56
    - Members 54-55
    - Employees 56
  - Dual government employment 56-57
  - Employees, generally 46-47, 88
  - Federal agencies, compensation for services before 24, 52-54, 170-171
  - Financial disclosure 59-60, 120

Page
Outside employment and compensation—Continued
  Foreign Governments ... 58-59
  Honoraria restrictions ... 50-52
  Law practice (see "law practice").
  Members' earned income limit (see "earned income limitation").
  Members, generally ... 45-48
  Negotiations with Federal Government ... 53
  Performance of official duties ... 45, 47
  Private foundations ... 59
  Professional staff of committees ... 57-58, 88
  Representations before the Federal Government ... 24, 52-54, 170-171
  Spouse outside employment considerations ... 66-68
  Use of position for private gain ... 46, 88, 116-117
Payroll padding ... 82, 87-88
Personal advertisements (see "Advertisements, personal").
Pictures of Members, franking ... 109
Political action committees (PACs):
  Contributions by ... 140
  Corporate and labor union contributions ... 140
  Direct interest in legislation ... 19
  Gifts from, and sponsoring organization ... 19
Political activities by House employees (see "campaign activities").
Political contributions:
  Between Members of Congress ... 142, 162
  Cash ... 141
  Corporations ... 140
  Excess ... 148-149
  Federal buildings ... 141
  Federal employees ... 141-142
  Foreign nationals ... 140
  Government contractors ... 140
  House employees ... 88, 142, 162
  Labor unions ... 140
  Limitations ... 140
  Political action committees ... 140
  Public utility holding companies ... 141
  Reporting ... 140
  Use of ... 144-148
Postage expenses ... 93
Postal patron mail ... 107, 111
Postal Service:
  Franked mail (see "franking privilege").
  Recommendations for employment in ... 173, 257-258
Practice of law (see "law practice").
Principal campaign committee ... 139
Principal assistants of Members ... 119, 131-133
Private representations before the Government ... 24, 52-54, 170-171
Private organizations:
  Member involvement with ... 97, 185-186
  Legislative service organizations and ... 182, 185-186
Professional staffs of committees ... 57-58, 88
Relatives:
  Employment of ... 80-81, 226-227
  Gifts from ... 15
  Gifts to ... 19-20
Rulemaking by Federal agencies ... 168, 225-226
Rules of supervisors ... 10
Select Committee on Ethics, 95th Congress:
  Opinions:
    Airline inaugural flights as gifts (No. 3) ... 38
    Definition of a gift (No. 7) ... 27
    Direct interest in legislation (No. 10) ... 30
    Direct mail solicitation as fundraiser (No. 4) ... 157
    Earned income limitation (No. 13) ... 69
    Fact-finding travel (No. 8) ... 34
    Fund raising by third parties (No. 11) ... 159
    Indirect gifts (No. 9) ... 37
    In-kind office services (No. 6) ... 101

Page
Select Committee on Ethics, 95th Congress—Continued
  Opinions—Continued
    Substantial participation in conferences (No. 2) ... 33
Separate segregated funds ... 140
Ship launchings ... 18, 36
Slush funds (see "unofficial office accounts").
Spirit of House Rules ... 7-8
Spouse of Member or employee:
  Employment by Member ... 79-80
  Financial disclosure ... 119
  Franking private, surviving spouse ... 108
  Gifts to as gift to Member ... 19-20
  Outside employment considerations ... 66-68
  Travel and transportation ... 33-35
Staff of Members and committees:
  Clerk hire allowance ... 79-80, 89-90
  Committee on House Administration regulations ... 79
  Discrimination ... 81
  Employment and compensation of, generally ... 78, 83
  Franked mail, responsibilities ... 108
  Nepotism ... 80-81
  Official duties ... 79-80, 83-86
  Outside employment (see "outside employment and compensation").
  Payments to obtain jobs ... 81-82
  Payroll padding ... 82, 87-88
  Political and campaign activities ... 86-88, 142, 150
  Representational activity before Federal agencies ... 24, 52-54, 236-237
  Salary kickbacks ... 82-83
  Use of staff on campaigns ... 86-88, 142-143, 150
  Work hours ... 85, 90
State and local government services ... 99, 102
Stationery ... 93
Substantial participation in conference or meeting ... 17, 33-34
Support organizations ... 181-183
Telecommunications expenses ... 93
Television time, expenses for ... 94, 243-244
Testimonials (see "fundraisers").
Theft ... 96
Tickets, as gifts:
  Political dinners ... 20
  Sporting events ... 20
  Theater ... 20
Town meetings:
  Announcement of ... 98, 155-156
  Expenses for ... 98, 155-156
Travel and transportation expenses:
  Compensation for substantial participation ... 17
  Conferences ... 17, 33-34
  Fact-finding tours ... 17-19, 34-36
  Federal, state, or local government provided ... 16, 28
  Foreign governments ... 20-21, 28, 245
  Gifts ... 17-20
  Home district ... 18, 36
  Honoraria ... 17, 51
  Official expenses ... 93, 96
  Reimbursement from official funds ... 96
    Mode of travel ... 95
    Trips allegedly not taken ... 95-96
  Substantial participation in conferences or meetings ... 17, 33-34
  Valuation of gifts of ... 20, 39-41
Undue influence:
  Administrative proceedings ... 168
  Congressional hearings ... 169
  Fraud ... 94-97, 169
  Threats of reprisals ... 149, 169
Unjust enrichment ... 96

Page

Unofficial office accounts:
  Fees collected for conferences 187
  Generally 97-99, 196
  Use of campaign funds 97
  Use of excess funds 148-149
  Volunteer programs 98, 102-103
Voting, abstention from:
  Conviction of a crime 8
  Personal interest in matters 127-130, 200
Wall between public and private funds 97

72-140 O